



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE

Miscellaneous Civil Application 68 of 2000

REPUBLIC.....APPLICANT

MOSES KAGIRI MUCHORI

VERSUS

CHAIRMAN – SINYERERE L.D.T)

MARY NYAMBURA CHEGE).....RESPONDENTS

RULING

By a Notice to Show Cause dated 30th October, 2009, the honourable court notified the parties herein that the suit would be dismissed for want of prosecution, pursuant to the provisions of Order XV1 Rule 2(1) of the Civil Procedure Rules, unless cause be shown why the same should not be dismissed.

In response to the NTSC, Peter Kiarie Ndarwa Advocate for and on behalf of the applicant, swore an affidavit on 30th November, 2009.

In the said affidavit, he averred that he was conversant with the facts of the case. That the application herein was listed for hearing on 26th April, 2006 and 4th January 2006 but the same did not take off.

Subsequently, the Chief Justice of the Republic of Kenya issued a directive in Kenya Gazette Notice No.300 dated 10th January 2006. The directive was to the effect that all judicial review applications be heard only in Nairobi Law Courts.

By reason of the directive of the Chief Justice aforesaid the application herein could not be prosecuted in the year 2007 and 2008.

The said directive had been lifted. The applicant is ready and willing to prosecute the application.

What compounded the problem was the fact that the ex-parte applicant was also a victim of the post-election violence and was displaced. It took awhile for him to be traced.

Last but not least, that the subject of the application, is very emotive, hence the court should exercise its jurisdiction to give the ex-parte applicant a chance to prosecute this application to its legal conclusion.

I have heard the advantage of perusing the court record. It is apparent that this file has been inactive for a long time. However, I take judicial notice of the fact that the Hon. Chief Justice issued a directive in Gazette Notice No.300 dated 10th January 2007. This disabled the applicant to proceed with the prosecution of this application. The said directive was rescinded sometime in the year 2008.

Order XV1 Rule 2(1) of the Civil Procedure Rules provides:

“In any suit in which no application has been made

Or step taken by either party for one year, the court may give notice in writing to the parties

to show cause why the suit should not be

**dismissed, and if cause is not shown to its
satisfaction, may dismiss the suit”.**

In the premises, I find as a fact that cause has been shown to the satisfaction of the court why the application stayed in limbo between 2007 and 2009.

Accordingly, I give the applicant six (6) months to fast track the application for hearing. In default the suit shall stand dismissed.

Dated and delivered at Kitale this 1st day of **FEBRUARY** 2010.

N.R.O OMBIJA

JUDGE

Mr Njoroge for Kiarie for Ex-parte Applicant