



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MERU**

**Misc Civ Appli 38 of 2003**

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF MANDAMUS CERTIORARI  
AND PROHIBITION**

**AND**

**IN THE MATTER OF MERU NORTH DISTRICT LAND ADJ. OFFICE DECISION (UNDER  
CAP 284)**

**BETWEEN**

**JOHN GITOBU RUKWARU.....  
APPLICANT**

**V E R S U S**

**ARITHO IGWETA.....1<sup>ST</sup>  
RESPONDENT**

**MERU NORTH DISRICT LAND ADJUDICATION OFFICER.....2<sup>ND</sup>  
RESPONDENT**

**R U L I N G**

1. The Application dated 12.7.2005 seeks orders under XVI Rule 5 of the Civil Procedure Rules that the suit herein be dismissed for want of prosecution.
2. It is the case by the Applicant that since 1.7.2003 when the originating summons was adjourned at the instance of the Applicant, no step was ever taken again to have the suit heard and finally determined. That since the delay in doing so has not been explained, and then the suit ought to be dismissed for want of prosecution.
3. I have seen the Replying Affidavit of Elijah Ogoti Advocate on behalf of the Applicant in the original action. It attempts to shift responsibility for pressing the suit forward to the Applicant now before court. It is however, also admitted that no action has been taken since 15.9.2004, a period of more than 1 ½ years before the filing of the Application. No explanation for inaction during that period has been given.
4. Granted, this is a matter involving land and court ought always to consider the sensitive nature of land before closing the path of justice to a party. However, even then, a party that is clearly uninterested in pursuing his cause cannot accept a court of Justice to aid his disinterest. That is the position of the

Respondent in this Application. If he chooses to sleep, as he has, the court will turn its judicial eye to a litigant who chooses not to sleep, like the Applicant in this case. I am aware that this is an Application for Judicial Review orders but I am still convinced that where a party brings an action and then goes to sleep because he has orders of stay of a decision, this court has inherent jurisdiction to do what it must do to ensure that the court process is not abused. Even if Order XVI Rule 5 of the Civil Procedure Rules does not apply, this court still has the power to stop abuse of its process. I should only also note in passing that the Notice of Motion dated 28.3.2003 is so procedurally defective that had it gone for full hearing it would have been struck off because of those defects. The motion for these reasons cannot stand and must be quickly put to rest.

5. The Application dated 12.7.2005 is with merit and is allowed as prayed.
6. Costs of the now dismissed action shall be paid by the Respondent to the 1<sup>st</sup> Respondent only.
7. Orders accordingly.

DATED SIGNED AND DELIVERED AT MERU THIS 4<sup>th</sup> DAY OF JULY 2006

ISAAC LENAOLA,

J U D G E

In the Presence of

Mr. Mwangi Advocate for the Applicant.

Mr. Nyaboga holding brief for Mr. Ogoti Advocate for the Respondent .

ISAAC LENAOLA

JUDGE.