



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

JUDICIAL REVIEW NO. 9 OF 2018

JOHN NJATI KIREMA.....1ST APPLICANT

ESTHER NKIROTE KIREMA.....2ND APPLICANT

AND

THE DEPUTY COUNTY COMMISSIONER

TIGANIA WEST SUB-COUNTY MERU COUNTY.....1ST RESPONDENT

THE LAND CONTROL BOARD TIGANIA WEST.....2ND RESPONDENT

THE DISTRICT LAND REGISTRAR MAUA.....3RD RESPONDENT

THE HON. ATTORNEY GENERAL.....4TH RESPONDENT

PHILIP KIREMA.....5TH RESPONDENT

TIMOTHY MURATHANI.....6TH RESPONDENT

RULING

1. Vide a notice of motion filed on 29.1.2020, the ex-parte applicant is seeking orders to have the suit reinstated as the same was dismissed on 20.1.2020. He also prays that the previous subsisting orders of certiorari and prohibition be reinstated. It is averred that the advocate who was in conduct of the matter resigned leaving the firm overwhelmed. Efforts to get an advocate to hold brief were also futile.

2. On 24.6.2020, Counsel for the Attorney General indicated that they would not oppose the application for reinstatement of the suit. They later qualified this position by stating that prayer 2 in the application dated 29.1.2020 is not clear since no order of certiorari was ever issued.

3. The other respondents were served but they did not file any response to the current application.

4. The decision whether a suit should be reinstated for trial is a matter of justice and it depends on the facts of the case – *see Mwangi S. Kaimenyi vs Attorney General & another (2014) eKLR*.

5. In the present case, the ex-parte applicants' counsel has explained to the satisfaction of this court the predicament which befell their law firm when the counsel handling the matter resigned. I have also taken into account that the Attorney General is not opposing the application as long as orders which did not exist before the dismissal of the suit are not issued.

6. Finally, I have considered that the application was filed expeditiously. In the circumstances, I allow the application filed on 29.1.2020 in the following terms:

7. The orders of 20.1.2020 dismissing the suit are hereby set aside and the suit is reinstated.

8. The orders given at the leave stage on 25.6.2018 are also reinstated. Parties to see the extracted order issued on 26.6.2018.

9. The ex-parte applicants are condemned to pay the costs of this application.

10. This suit is to be heard within a period of three months otherwise the orders granted herein shall lapse.

DATED, SIGNED AND DELIVERED AT MERU THIS 10TH DAY OF FEBRUARY, 2021

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this Ruling was given to the advocates for the parties through a virtual session via Microsoft teams on 3.11.2020. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17th March, 2020 and published in the Kenya Gazette of 17th April 2020 as Gazette Notice no.3137, this Ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the *Civil Procedure Rules* which requires that all judgments and rulings be pronounced in open court.

HON. LUCY N. MBUGUA

ELC JUDGE