



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC PETITION NO. E005 OF 2020

IN THE MATTER OF BREACH OF THE CONSTITUTION AND ESPECIALLY ARTICLES 1 (1)(b), 1 (4)(b), 2, 3, 6, 10, 12, 19, 20, 21, 22, 23, 24, 27, 8, 40, 47, 48, 50, 60, 61, 64, 66, 68, 75, 77, 174, 175, 185, AND 197 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF SECTION 24, 25, 78 AND 79 OF THE LAND REGISTRATION ACT NO. 3 OF 2012

AND

IN THE MATTER OF ARTICLES 2, 3, 4, 7, 13 AND 19 OF THE AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS AND OTHER PROVISIONS THEREOF

AND

IN THE MATTER OF THE LAND REGISTRATION ACT AND THE LAND ACT

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES 2013, SECTION 4

BETWEEN

MICHAEL MUGAMBI MURUKAAPPLICANT

VERSUS

THE LAND REGISTRAR TIGANIA EAST

DISTRICT.....1ST RESPONDENT

THE ADJUDICATION OFFICER, KARAMA

ADJUDICATION SECTION2ND RESPONDENT

THE HON. ATTORNEY GENERAL.....3RD RESPONDENT

AND

JOSEPH M'IMUNYA MURUKA1ST INTERESTED PARTY

PETER MILIONEA2ND INTERESTED PARTY

GERVASIO KAKAMBI THITURA3RD INTERESTED PARTY

RULING

1. Before me is a notice of motion dated 19/01/2021 seeking an order for the reinstatement of the application dated 29.10.2020 which was dismissed on 19.1.2021. The applicant contends that him and his advocate went to the open court on 19.1.2021 as they had the mistaken belief that the matter would be heard there. The applicant later learnt that the matter was dismissed during a virtual court session.

2. The interested parties have opposed the application vide the replying affidavit dated 8/02/2021 sworn by Joseph M'Imunya Muruka, the 1st interested party. He avers that their advocate on record had advised them that the matter would be heard virtually and when the matter was called out, the petitioner and his advocate failed to appear, hence the court properly and perfectly dismissed the application. That the excuses given by the petitioner are lame and unfounded as the court has been conducting mentions and applications virtually due to the covid-19 pandemic.

3. **Section 3A of the Civil Procedure Act** provides as follows:

“Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

4. The exercise of this discretion is intended to avoid injustice or hardship resulting from an accident, inadvertence or excusable mistake or error but is not meant to assist a person who deliberately seeks to obstruct or delay the course of justice, See- **Shah vs Mbogo & Another (1967) EA 116.**

5. The applicant claims that he thought his matter was to be heard in open court. However, every matter coming up before the court on any given day is cause listed. The cause list which is disseminated to the advocates in advance clearly indicates that all applications and mentions are conducted through virtual sessions and not in open court. The applicant has not given any plausible explanation as to why him and his advocate were of the view that the matter would be handled in open court.

6. Nevertheless, I have taken into consideration that the application was filed promptly on the same date the earlier application was dismissed. The mistake of going to open court instead of logging into the virtual system is also excusable. I therefore allow the application but with costs being awarded to the interested parties.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 21ST DAY OF APRIL, 2021 IN PRESENCE OF:

C/A: Kananu

D. Maranya for petitioner

HON. LUCY. N. MBUGUA

ELC JUDGE