



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

JUDICIAL REVIEW NO. 10 OF 2017

M'THIRINGI M'ANMPIU

MARIQUETA NKOYAI M'THIRINGI.....APPLICANTS

VERSUS

THE DISTRICT LAND ADJUDICATION OFFICER & SETTLEMENT

OFFICER TIGANIA EAST.....1ST RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

PETER MIRITI M'LINGERA.....1ST INTERESTED PARTY

PAUL KAMATHIA M'KIRIMA 2ND INTERESTED PARTY

BERNARD KITHERA NGEERA.....3RD INTERESTED PARTY

NKUBITI M'MBIRITHU4TH INTERESTED PARTY

LITHUMAI ITHICU 5TH INTERESTED PARTY

RULING

1. Before me is a notice of motion dated 6th November 2020 brought pursuant to Section 3A of the Civil Procedure Act, Order 12 rule 7 and Order 51 Rule 1 of the Civil Procedure Rules. The applicant is seeking orders for reinstatement of the suit which was dismissed on 16.7.2018, revival of the orders granted on 22.2.2017 and the substitution of the 1st applicant with Joseph Thiringi M'Thiringi who is now the administrator of the estate of M'Thiringi M'Anampiu.

2. The application is based on the grounds on the face of it and on the affidavits of the 2nd exparte applicant, one Mariqueta Nkoyai M'Thiringi. She avers that she filed this cause with her father who passed on a year later. Their advocate did not give them adequate information regarding the case. She later got another advocate who informed her that the matter was dismissed. She contends that they have obtained letters of administration ad litem and now wish to continue with the cause and to substitute the 1st applicant with Joseph Thiringi M'Thiringi. She contends that the delay in prosecuting this matter was due to misinformation and was inadvertent.

3. The application is opposed vide a replying affidavit dated 02/02/2021 sworn by Paul Kimathia M'Ikirima the 2nd interested party with authority from the 1st, 3rd and 5th interested parties. They aver that the application is full of concocted falsehood intended to delude this court to grant the applicant undeserved orders as she has never prosecuted her cause for almost 4 years. That equity comes to the aid of the vigilant and not the indolent and her allegation that she was misinformed by her advocate has not been supported by any evidence.

4. I have considered all the issues raised herein. I find that the initial exparte applicants approached this court on 22. 2. 2017 seeking orders to institute Judicial Review orders of Certiorari, Mandamus and Prohibition relating to the suit parcels number 3869 and 3870. The court allowed the application with directions that the substantive motion was to be filed within 21 days thereof.

5. A perusal of the file indicates that no such substantive motion was ever filed, and no further action was taken on the file. Thus even as the

court was proceeding to dismiss the suit on 16.7.2018, there was really no Judicial Review Suit in existence.

6. The provisions of **Order 53 (3) of the Civil Procedure Rules** provide that;

When leave has been granted to apply for an order of mandamus, prohibition or certiorari, the application shall be made within twenty-one days by notice of motion to the High Court.....”

7. In the case of **Mary Kiunga Ikiome v H Young Company Ltd [2019] eKLR**, the court had this to say in respect of a none existent suit;

“...Of fundamental concern is the fact that the plaintiff died on 10th August, 2012, and the suit abated by operation of the law 1 year later, hence by 10th August, 2013 the suit had abated. The appellant filed an application dated 13th November 2013 for substitution by which time the suit had abated. Makau, J. held as much and no appeal was filed against this finding. It is therefore correct to state that by the time the matter came before Gikonyo, J. there was no suit pending as the plaintiff’s suit had abated by 10th August, 2013. In our view, the orders sought by the appellant in this appeal are superfluous. The appellant in apparent realization of the futility of the orders sought, placed reliance on Article 159(2)(d), of the Constitution. It is however, our considered view that Article 159 (2)(d), of the Constitution will not avail the appellant”.

8 Even though the above cited case relates to a suit which was no more due to abatement, the fundamental issue is the same. That there was no suit pending. Thus even in the current suit, the provisions of Article 50 and 159 of the Constitution cited by the applicants cannot come to salvage the situation. This is because the Judicial Review suit was never filed as directed by the court on 22.2.2017, hence there is nothing to reinstate. The application dated 6.11.2020 is hereby dismissed with costs to the interested parties.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 12TH DAY OF MAY, 2021 IN PRESENCE OF:

C/A: Kananu

Miss Aketch for applicants

Interested party in person

Kiongo for respondent

HON. LUCY. N. MBUGUA

ELC JUDGE