



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC PETITION NO. 4 OF 2020

EMMANUEL NYONGESA

FRED JUMA

BENSON GETERU MUJOMBA

EPHANTUS MWANIKI

DAVID KEYA & 31 OTHERS.....PETITIONERS

VERSUS

COUNTY GOVERNMENT OF TRANS-NZOIA.....RESPONDENT

RULING

The Application

1. The petitioners filed the instant petition on **17/9/2020** and directions and relevant timeframes having been issued on **11/12/2020** as to the filing of the reply and the disposal of the petition by way of written submissions, they failed to file their submissions and this court naturally deemed the petition unprosecuted and dismissed it on **17/2/2021** while sparing the petitioners costs.

2. This ruling is in respect of an application by way of Notice of Motion dated **18/2/2021** brought under **Section 1, 1A, 1B, 3 and 3A** of the **Civil Procedure Act Cap 21 Laws of Kenya** and **Order 17 and 50** of the **Civil Procedure Rules 2010**. The applicants seek the following orders:

- (1) That the orders issued on 17/2/2021 dismissing the petitioners' petition dated 14/9/2021 for want of prosecution be set aside and or vacated.**
- (2) That the petition filed herein dated 14/9/2020 be reinstated and the same be scheduled for hearing on a priority basis.**
- (3) That upon prayer (2) herein above granted the court be pleased to reinstate orders of *status quo* issued on 10/12/2020.**
- (4) That the costs of this application be in the cause.**

3. The application is premised on the grounds set out in the notice of motion and is supported by an affidavit of **Joshua K. Arusei Bungei**, Counsel for the applicants, sworn on **18/2/2021**. The grounds relied on are that the respondent failed to file a response to the petition within the stipulated time, but did so much later; that given that the petition involves many litigants counsel for petitioners had limited time to contact all of them upon service of the reply hence the delay in filing a further affidavit and submissions within the time frame ordered by court. He also avers that when the matter came up for a mention on the day of dismissal he had worldwide web connectivity challenges and could not address court hence the dismissal in his absence. He implores the court for more time to file the necessary affidavit and submissions.

The Response

4. In response to the application, the respondent filed its replying affidavit sworn on **22/2/2021** by **Beatrice Wangila**, the County Physical Planner. She deposed that her absence from the office delayed the filing of the replying affidavit till **21/1/2021**, but that there was still much time between the date of service of the reply and the date for mention on which the matter was subsequently dismissed during which the petitioners could have filed their submissions; that therefore the respondent's delay in filing a response should not be made the scapegoat for

the failure of the petitioners to file submissions and the resulting consequences of that omission; that the matter concerns only 4 litigants and all the others have not been named in these proceedings, and that generally no sufficient grounds have been given to enable the granting of the reinstatement order sought.

Submissions

5. The respondent filed its written submissions on **12/3/2021**. The petitioners, this time more lethargic just as the respondents were in the wake of directions of **11/12/2020**, filed their written submissions later on **16/3/2021**. I have considered the application as well as the responses including the submissions of the parties.

Determination

6. The issues arising for determination in the instant matter are as follows:

(a) Whether the Petition should be reinstated for hearing on its merits.

(b) Whether the orders of status quo should be reinstated.

(c) Who should bear the costs of the application?

7. I have considered the facts revealed by the petitioner and admitted by the respondent to the effect that the respondent delayed the service of the reply upon the petitioner's counsel and that the petitioner needed time to consult his numerous clients in the matter.

8. Consultation with clients is a necessary enterprise in any suit and the advocate for the petitioners may be excused for taking time to consult. He was supposed to have attended court to seek more time on **17/2/2021** to do so; however, his excuse is that he had worldwide web connectivity problems on that date and he was not able to address court. In this digital era largely forced upon advocates and clients by the prevailing pandemic, and in which they are apparently yet to fully master the digital ropes to swing by, I am prepared to accord the applicant's counsel the benefit of doubt and rely on that as his true excuse for non-attendance. Besides, it has been demonstrated that the respondent's delay unduly ate into his timeframe and it may have occasioned the anxiety of the petitioner's counsel that may have prompted him to call for more instructions.

9. For the reasons aforestated I find that the application dated **18/2/2021** has merit and I grant it in terms of **Prayers Nos. (1), (2) and (3)** thereof. The costs of the application shall be in the cause.

10. The petitioners shall file and serve their supplementary affidavit and submissions on the main petition within **14 days** of this order and the respondent shall respond thereto within **14 days** of service thereof.

11. The petitioners' supplementary affidavit shall disclose the full identification details and addresses of all the petitioners in response to the averment in the affidavit dated **22/2/2021** denying the existence of some of them. A response (if any) to these details shall be filed by the respondent and served by way of an affidavit alongside the submissions of the respondent within the time frames ordered above.

DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THIS 8TH DAY OF JUNE, 2021.

MWANGI NJOROGE

JUDGE, ELC, KITALE.