



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

JUDICIAL REVIEW NO. 163 OF 2006

IN THE MATTER OF

AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF

CERTIORARI/PROHIBITION AGAINST THE MERU

CENTRAL DISTRICT LAND DISPUTES TRIBUNAL

ABOTHUGUCHI AND

IN THE MATTER OF

SECTION 8 & 9 OF THE LAW REFORM ACT CAP 26 LAWS OF KENYA

AND

IN THE MATTER OF

THE REGISTERED LAND ACT CAP 300 LAWS OF KENYA

AND

IN THE MATTER OF

MERU CENTRAL LAND DISPUTE TRIBUNAL CASE NO. 98 OF 2005

AND

IN THE MATTER OF

LAND PARCEL NO. ABOTHUGUCHI/MAKANDUNE/107

AND

IN THE MATTER OF

MERU CMC L.D.T. NO. 19 OF 2006

AND

IN THE MATTER OF

THE LAND DISPUTES TRIBUNAL ACT NO. 18/90

REPUBLIC..... APPLICANT

VERSUS

THE DISTRICT COMMISSIONER (AS CHAIRMAN

MERU CENTRALLAND DISPUTE TRIBUNAL)..... 1ST RESPONDENT

LAND DISPUTES TRIBUNAL

ABOTHUGUCHI DIVISION 2ND RESPONDENT

MARGARET MARETEINTERESTED PARTY

EX-PARTEMWITAITI MUGWIKA

RULING

1. Though an application dated 28.2.2020 the exparte applicant applies for setting aside of the dismissal order made on 20.1.2020. The grounds upon which the application is based are set out in the supporting affidavit by B.G. Kariuki advocate sworn on 28.2.2020.
2. It is averred the advocate holding brief for counsel for the exparte applicant mis-diarized the matter for 20.2.2020 instead of 20.1.2020.
3. Further it is averred the exparte applicant had substantially complied with the court directives as to the filing and service of written submissions, hence urges the court finds his explanation reasonable..
4. The respondents have stated they are not opposed to the motion while the interested parties did not file any grounds of opposition.
5. The exparte applicant came to court under certificate of urgency on 4.10.2006. Leave was granted to commence judicial review proceedings and the same to act as stay. The substantive motion was eventually filed on 19.10.2006.
6. After various mentions the exparte applicant sought for and was allowed to withdrawal prayer (ii) of the notice of motion dated 18.10.2006.
7. On 6.12.2012, an issue arose as to whether judicial review matters fall under the High Court or the ELC court. A ruling was rendered in which this court affirmed it had requisite jurisdiction on 1.5.2013.
8. On 2.5.2013 parties agreed to canvass the matter by way of written submissions. The exparte applicant was given 30 days to comply and the respondents/interested party 14 days with a mention on 18.6.2013 to confirm compliance.
9. As at 18.6.2013 the exparte applicant had complied while the rest had not so the court gave them 30 more days to comply with a mention for 19.7.2013. The case was mentioned on 28.8.2013 when it was confirmed that the parties had filed written submissions.
10. On 7.2.2018 the court gave a judgment for 30.5.2018 in which the notice of motion was allowed with no orders as to costs.
11. On 28.3.2019 the court directed the application dated 5.2.2019 be served and to come for hearing on 4.7.2019.
12. On 11.7.2019 the court gave directions the application be served upon the applicant and the interested party and parties to file written submissions by 11.9.2019 with an order no documents would be accepted if filed outside the given timelines. The date for confirmation of compliance was given as 15.10.2019.
13. On 15.10.2019 the court was told the earlier directives had not been complied with and a request for more time to comply was made. The court made it clear the exparte applicant was to serve the Attorney General within 30 days otherwise the suit shall stand dismissed by 15.11.2019.
14. The interested party was also ordered to file his reply and submission's by 15.11.2019. A mention date for 20.1.2019 was given.
15. Come 20.1.2020 there was no appearance by the exparte applicant and the respondents. The court made a finding its earlier orders had been complied with. It dismissed the application dated 5.2.2019 and closed the file. There was no action until 11.3.2020 when the current application was filed as record shows.
16. The court had pronounced its judgment and a decree was issued on 5.10.2018. The application dated 5.2.2019 was being made post-judgment.
17. The reasons given for non-attendance are mis-diarizing by counsel then holding brief. The said counsel has not sworn any affidavit to confirm that mistake.
18. Similarly the exparte applicant says he had substantially complied with the orders earlier granted as to service and filing of the submissions. The court record indicates the exparte applicant's submissions dated 22.8.2019 were filed on 12.9.2019. This was outside the timelines and contrary to the orders made on 11.7.2019. No other party filed their submissions as ordered.

19. Further there is no record that the exparte applicant had filed any return of service to that effect. The supporting affidavit to the current motion is therefore lacking vital details and annexures to substantiate its contents.

20. Regarding the averment the exparte applicant would suffer irreparable damage if the orders are not set aside, the suit was determined and a decree still stands. Even though the order says the suit herein stands dismissed that must have been an accidental slip of pen and as such correctable under **Section 99** of the **Civil procedure Act** and **Order 45** of **Civil Procedure Rules** as held in *Margaret Maguro Njuguna – vs- John Ndungu Gatheba [2018] eKLR.*

21. All what was dismissed is the application seeking for inhibition orders and in which in my considered view does not fall under **Order 22** of the **Civil Procedure Rules**.

22. The court is always available to the exparte applicant as long as any post-judgment applications as to execution of the decree are concerned.

23. In the premises, the application dated 5.2.2019 is dismissed with orders as to costs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 8TH DAY OF DECEMBER, 2021

In presence of:

Mbubuya for applicant

Gichunge Muthuri for interested party

Mr. Kieti for respondents

Court Assistant - Kananu

HON. C.K. NZILI

ELC JUDGE