



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**CONSITUTIONAL AND HUMAN RIGHTS DIVISION**  
**PETITION NO.454 OF 2018**

**PERISTER KWAMBOKA OMWENGA**

**T/A P. K. OMWENGA AND ASSOCIATES ..... PETITIONER/APPLICANT**

**VERSUS**

**DIRECTOR CRMINAL INVESTIGATION DEPARTMENT.....1<sup>ST</sup> RESPONDENT**

**CHINA ROAD AND BRIDGE CORPORATION LIMITED.....2<sup>ND</sup> RESPONDENT**

**KITEI PETER ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**JOHN MERCERINO KIMATHI ..... 1<sup>ST</sup> INTERSTED PARTY**

**THE LAW SOCIETY OF KENYA ..... 2<sup>ND</sup> INTERESTED PARTY**

**RULING**

1. This matter came up for mention on 31<sup>st</sup> May, 2021 before Justice Korir when both advocates and parties were absent. The court noted that their absence was despite having been served with mention notices. It was therefore directed that a dismissal notice be issued for 26<sup>th</sup> October, 2021.
2. The matter later came up for mention when both parties were represented including Peter Kitei "A" and "B".
3. In the meantime the petitioner filed an affidavit dated 27<sup>th</sup> October, 2021 in response to the dismissal notice. She explains how she and her advocate were unable to join the virtual hearing platform, due to internet challenges. She pleads for another chance to be heard.
4. In response Mr. Agwara who had not been served with the affidavit, said this matter had been dismissed before, and same issues raised. He called on the court to dismiss the petition since the prosecution of the matter in issue had progressed. He adds that timelines had been issued but were not complied with.
5. In a rejoinder M/s Omwenga for the petitioner admitted that the matter had been dismissed for non-attendance and not want of prosecution. She submitted that the criminal case which touches on over 300 persons was yet to be prosecuted. She prayed for a chance to be heard.
6. I have perused this file and note that the petition was filed on 14<sup>th</sup> December, 2018. It was dismissed for want of prosecution on 16<sup>th</sup> January, 2020 and not non-attendance as claimed by M/s Omwenga for the petitioner.
7. It is not clear what happened on 19<sup>th</sup> March, 2020 when the matter was to come up for hearing. The record shows that the matter next came up on 9<sup>th</sup> July, 2020 when both counsel were absent and it was to be mentioned on 18<sup>th</sup> November, 2020. On the said date only counsel for the 1<sup>st</sup> respondent was present and another mention date set for 1<sup>st</sup> March 2021. On this date all Advocates and the parties were absent

and a further mention date was given for 31<sup>st</sup> May, 2021.

8. Again on 31st May, 2021 none of the parties nor advocates attended court. The court directed for a dismissal notice to issue. It is that Notice that the court is now addressing.

9. The analysis above shows that both parties have not been serious about this matter. However, it is the petitioner who carries the heavier burden because it is her who filed this petition and brought all the other parties to court. She is the one who should move the court for purposes of hearing her case.

10. Directions were issued by the court on 3<sup>rd</sup> December, 2019 on how the petition should proceed. From the record it is only the 2<sup>nd</sup> and 3<sup>rd</sup> respondents (Peter Ketei B) who have filed submissions. I am giving the petitioner one **last chance** to prosecute her claim. Those who are yet to comply with the court directions to do so within 30 days.

11. Mention on 19.01.2022 to confirm compliance and further directions. As earlier directed by the court Peter Kitei "A" & "B" should be present on the said date. These directions to be served by the petitioner on all parties.

Orders accordingly.

**Delivered online, signed and dated this 18<sup>th</sup> day of November, 2021 in open court at Milimani Nairobi.**

**H. I. ONG'UDI**

**Judge of the High Court**