



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

JUDICIAL REVIEW No. 8 OF 2019

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF CERTIORARI AND PROHIBITION

BETWEEN

SCHOOL MANAGEMENT COMMITTEE

BAGARIA PRIMARY SCHOOL.....APPLICANT

AND

THE HON. ATTORNEY GENERAL.....1ST RESPONDENT

LAND DISPUTE TRIBUNAL AT MOLO.....2ND RESPONDENT

PRINCIPAL MAGISTRATE'S COURT AT MOLO.....3RD RESPONDENT

CHIEF LAND SURVEYOR NAKURU DISTRICT.....4TH RESPONDENT

CHARLES NJENGA KARIBE.....INTERESTED PARTY

RULING

1. This ruling is in respect of the Interested Party's Notice of Motion dated 14th February 2013, an application through which the interested party seeks striking out of this matter for failure to file the substantive Notice of Motion within the prescribed period of 21 days of leave being granted. The application is supported by a supporting affidavit and further affidavit, both sworn by the interested party. He deposed that despite obtaining leave to commence judicial review proceedings way back on 10th August 2011, the ex parte applicant has so far not filed the substantive Notice of Motion.

2. Although served with the application, the ex parte applicant neither responded to it nor attended court at its hearing. The interested party argued in his submissions that in view of the provisions of **Order 53 Rule 3(1)** of the **Civil Procedure Rules**, the ex parte applicant had a mandatory obligation to file the substantive Notice of Motion within the prescribed period of 21 days of leave being granted and that owing to failure to do so the judicial review proceedings herein ceased to exist and further that the orders sought should issue. He relied inter alia on the cases of **Republic v County Government Of Machakos & another Ex-parte Benard Kiala [2016] eKLR** and **Republic v Public Procurement Administrative Review Board & another; Mer Security & Communications System Ltd/Megason Electronics & Control 1978 (JV) & another (Interested Parties); Exparte Magal Security Systems Ltd/Firefox Kenya Limited (JV) [2019] eKLR**. On their part, the respondents associated themselves fully with the interested party's submissions.

3. I have considered the application, the affidavits filed and the submissions. The record herein shows that on 10th August 2011, the ex parte applicant was granted leave to apply for an order of certiorari removing the decision of Land Dispute Tribunal at Molo made on 26th April 2011 to this court for purposes of being quashed. The ex parte applicant was also granted leave to apply for an order of prohibition to stop enforcement of the said decision. Further, leave was granted to apply for an order of prohibition to stop the execution of a decree dated 12th July, 2011 as well as subsequent proceedings and order made on 26th July, 2011 at Principle Magistrate's Court at Molo in Land Disputes Case No. 10 of 2011. Equally, leave was granted to apply for an order of prohibition to stop the Chief Land Surveyor Nakuru District and or his agents, employees and servants from resurveying the ex parte applicant's Land pursuant to the order of 26th July, 2011. Leave so granted operate as a stay of execution of the decree, the order and the proceedings referred to.

4. By dint of the provisions of **Order 53 Rule 3(1)** of the **Civil Procedure Rules**, a litigant who has obtained leave to commence judicial review proceedings should file the substantive application within 21 days. The rule provides:

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, and there shall, unless the judge granting leave has otherwise directed, be at least eight clear days between the service of the notice of motion and the day named therein for the hearing.

5. The rule is couched in mandatory terms. I have perused the record herein and I have not seen any substantive Notice of Motion filed by the ex parte applicant in compliance with **Order 53 Rule 3(1)** of the **Civil Procedure Rules**. As such, the leave that was granted lapsed after 21 days from 10th August 2011. That being the case, the ex parte applicant lost the opportunity to seek the judicial review orders.

6. I am keenly aware that the remedy of striking out that I have been invited to grant is a draconian one that should be resorted to sparingly and only in the clearest of cases. See **Uchumi Supermarkets Limited & another v Sidhi Investments Limited [2019] eKLR**. I have no doubt in my mind that this is one of those clearest cases. There is no point keeping proceedings pending when they serve no purpose at all. The leave that was granted herein lapsed and the ex parte applicant has not even sought to sustain these proceedings. I see no reason why the orders sought should not issue.

7. I therefore make the following orders:

a) This matter is hereby struck out for failure to file the substantive Notice of Motion within the prescribed period of 21 days of leave being granted.

b) Costs of both Notice of Motion dated 14th February 2013 as well as the entire proceedings are granted to the interested party.

Dated, signed and delivered in open court at Nakuru this 27th day of February 2020.

D. O. OHUNGO

JUDGE

In the presence of:

No appearance for the Ex Parte Applicant

Mr Ondieki for the Respondents

Mr Kibet for the Interested Party

Court Assistants: Beatrice & Lotkomoi