



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**JUDICIAL REVIEW NO. 7 OF 2018**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS OF MANDAMUS, CERIORARI AND PROHIBITION**

**-AND-**

**IN THE MATTER OF LAND CONSOLIDATION ACT, CAP 283 LAWS OF KENYA**

**-AND-**

**IN THE MATTER OF LAND PARCEL NO. MUTUATI/AMWATHI 1B ADJUDICATION SECTION**

**BETWEEN**

**JUSTUS KOBIA MUTIA.....1<sup>ST</sup> APPLICANT**

**KIRAMBI M' LITUANGE.....2<sup>ND</sup> APPLICANT**

**JOSEPH MAKAMBA.....3<sup>RD</sup> APPLICANT**

**VERSUS**

**JACOB MANTILI KING'ANG'A.....1<sup>ST</sup> RESPONDENT**

**DISTRICT LAND ADJ &**

**SETTLEMENT OFFICER.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before me is a Notice of Motion Application dated 3rd August 2018, and brought pursuant to the provisions of Order 12 Rule 7 Order 45 Rule1 and Order 51 of the Civil Procedure Rules, in which the Applicants seek an order to review, vary, set aside the orders of 24<sup>th</sup> July 2018, dismissing their application for Judicial Review No. 7 of 2018, for failure to file the substantive motion within time.
2. The application is supported on the grounds on the face of it and on an affidavit filed by Milly Okello, counsel who has conduct of this matter on behalf of the Applicants. It is averred that the 2<sup>nd</sup> Applicant who had been given authority to act on behalf of the other Applicants had an ailing wife and had to take her for treatment in Nairobi and that counsel had no other means of reaching the other Applicants and the 2<sup>nd</sup> Applicant could also not be reached on phone.
3. I have carefully considered this application. It was contended for the Applicants that the 2<sup>nd</sup> Applicant who was acting on behalf of the other Applicants had an ailing wife admitted in hospital in Nairobi and that by the time the court granted leave on 21<sup>st</sup> June 2018, counsel had prepared the substantive motion and upon calling the 2<sup>nd</sup> Applicant, he informed him of his predicament hence the substantive motion could not be filled for lack of filing fees and instructions, and that further later on, counsel for the Applicants also fell ill and could therefore not pursue the Applicants in order to file the substantive motion.
4. The allegations that 2<sup>nd</sup> Applicant who was acting on behalf of the other Applicants had a sick wife who was admitted in hospital in

Nairobi is not supported by any evidence. Similarly, the allegations that counsel who had the conduct of this matter on behalf of the Applicants fell ill and was hence unable to pursue the Applicants was also not supported by any evidence and the same remains mere allegations.

5. The Applicants appeared to contradict themselves. Whereas at paragraph 11 of the supporting affidavit they admitted that they did not abide by the court orders of 21<sup>st</sup> June 2018, at paragraph 5, their counsel deposed that on 21<sup>st</sup> June 2018, she did prepare the substantive motion. No such substantive motion has however been annexed to this application whether in draft form or otherwise to support the Applicants' position.

6. Similarly, the Applicants have not demonstrated or shown to the satisfaction of this court, the action that they have taken since 24<sup>th</sup> July 2018 when the suit was dismissed and the only logical inference that can be made is that no substantive motion has been prepared to date.

7. As was stated by MR. Kiongo, the state counsel on 24/7/2018, the provisions of order 53 of the Civil Procedure Rules are clear, once leave is granted, the substantive Judicial Review Motion **SHALL BE MADE WITHIN 21 DAYS**.

8. I find that there are no sufficient grounds to warrant a review of the court's order of 24.7.2018. Accordingly, the Applicants application dated 3<sup>rd</sup> August 2018, is without merit and the same is hereby dismissed with costs to the Respondents.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 13<sup>TH</sup> FEBRUARY, 2019 IN THE PRESENCE OF:-**

**C/A: Kananu**

**Miss Soi for applicant**

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**