



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**JUDICIAL REVIEW APPLICATION NO. 5 OF 2015**

**BENJAMIN MUGAMBI MUKINDIA.....EXPARTE APPLICANT**

**VERSUS**

**THE LAND ADJUDICATION AND SETTLEMENT OFFICER**

**TIGANIA EAST/WEST DISTRICT.....1<sup>ST</sup> RESPONDENT**

**DEMARCAATION OFFICER, AKAIGA**

**ADJUDICIAOTN SECTION .....2<sup>ND</sup> RESPONDENT**

**M'ITARU KABARI .....INTERESTED PARTY**

**JEREMY KANYI KABARI .....SUBSTITUTED INTERESTED PARTY**

**RULING**

1. Vide the application dated 25.10.2018, the exparte applicant is seeking orders for reinstatement of the suit, which was dismissed on 25.10.2018. Applicant avers that he did not intentionally absent himself from the court. He avers that he had gone to court no. 3 where his case is usually held but he was told to go to court no. 2 where Judge Kemei was sitting. Upon going to court no. 2 he found that his matter had been called out and was dismissed.

2. The respondent and the interested party had indicated that they would oppose the application. However only the interested party filed a replying affidavit and submissions. The interested party avers that the exparte applicant's advocate was present in court on 24.9.2018 when the date of hearing was given as 25.10.2018. It is also argued that the matter was in the cause list which was placed in the public notice board clearly indicating where the case would be heard and that no reasonable grounds have been advanced as to why the exparte applicant's counsel was absent and hence the court should not assist on indolent litigant.

3. I have considered all the arguments raised herein. It is not disputed that the date of 25.10.2018 was given on 24.9.2018 in the presence of counsels for all the parties. The matter was to be heard before Hon. Judge Kemei who was a visiting judge. The exparte applicant avers that he had gone to court no. 3 only to hear an announcement that he was to go to court no. 2.

4. The interested party has stated that the cause list placed on the notice board clearly indicated where the case was to be heard, but he has not clarified which place it was where the matter was to be heard. From the material presented before me, I am not able to ascertain where Judge Kemei was sitting on 25.10.2018.

5. There is a likelihood that the exparte applicant was confused as to where his case was being heard though there is no plausible explanation as to where his advocate was.

6. Further, I have taken into consideration that this application was filed in a timely manner. I will give the exparte applicant the benefit of doubts. I allow the application dated 25.10.2018 with no orders as to costs.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 17<sup>TH</sup> DAY OF JULY, 2019 IN THE PRESENCE OF:-**

C/A: Kananu

B.G Kariuki for exparte applicant

Kiongo for respondent

Murango Mwenda for interested part

Exparte applicant

Interested party

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**