



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**JUDICIAL REVIEW APPLICATION NO. 22 OF 2017**

**IN THE MATTER OF AN APPLICATION BY SIMON MUGAMBI NABEA FOR**

**LEAVE TO APPLY FOR JUDICIAL REVIEW ORDER OF CERTIORARI**

**AND**

**IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORM ACT CAP 26 LAWS OF KENYA**

**AND**

**IN THE MATTER OF LAND PARCELS NO. 9957 KARAMA ADJUDICATION SECTION**

**AND**

**IN THE MATTER OF OBJECTION NO. 42**

**AND**

**IN THE MATTER OF SECTION 26 OF THE LAND CONSOLIDATION ACT CAP 283 LAWS OF KENYA**

**BETWEEN**

**REPUBLIC.....PLAINTIFF**

**VERSUS**

**LAND ADJUDICATION AND SETTLEMENT**

**OFFICER TIGANIA EAST.....APPLICANT**

**ALEXANDER MEEME KAJOI.....INTERESTED PARTY**

**EX PARTE APPLICANT**

**SIMION MUGAMBI NABEA**

**RULING**

1. This matter relates to the Motion dated 5/10/2018 brought under **Section 1A, 1B and 3A of the Civil Procedure Act and Order 12 Rule 7 and 51 of the Civil Procedure Rules**. The applicant seeks for the review setting aside of the dismissal of the judicial review application herein and reinstate the same for hearing.

2. The grounds upon which the application is premised upon are set out in its body and the supporting affidavit of David Maitai Rimita sworn on 5/10/2018. It is contended that the exparte applicant did as per the directions required including serving the respondent and interested party but no responses were filed. The court was to give directions on how to proceed with the matter but instead issued notice to show cause why the same should not be dismissed.

3. The matter was scheduled for 24/09/2018 where Mr. Wamache who conducted the application, on behalf of Mr. Maitai, attended the court

late and the matter was dismissed. Mr. Maitai discovered that the matter was mentioned in the absence of Mr. Wamache and that it had been dismissed. He had no reason to believe that the said advocate would let him down. The exparte applicant has a good case and he ought to be allowed to ventilate his case as mistakes of an advocate should not be visited on him.

4. The court gave directions for the matter to be canvassed via written submissions and only the applicant complied with the said directions. The exparte applicant submitted by reiterating what had been stated in the application. He added that there are legal issues for determination by this court which warrant the reinstatement of the suit. He relied on the case of **Shayona Timber Limited v Kenya National Highway Authority [2019] eKLR** to support his claim.

5. The issue for determination is *whether to reinstate the suit*. **Order 12 Rule 7 of the Civil Procedure Rules** provides that:

***“Where under this Order judgment has been entered or the suit has been dismissed, the court, on application, may set aside or vary the judgment or order upon such terms as may be just.”***

6. Thus, the court has unfettered discretion to set aside or vary a judgment or order. In the case of **CMC Holdings Limited -vs- Nzioki [2004] 1 KLR 173** it was held as follows:

***“In law, the discretion that a Court of law has, in deciding whether or not to set aside ex-parte order...was meant to ensure that a litigant does not suffer injustice or hardship as a result of among other things an excusable mistake or error. It would...not be proper use of such a discretion if the Court turns its back to a litigant who clearly demonstrates such an excusable mistake, inadvertence, accident or error...”***

7. Counsel for the exparte applicant has explained to this court the issue that led to the dismissal of the suit. He stated that advocate Wamache who was to attend court on 24/09/2018 arrived late in court and that he misdirected him by making wrong notes, see- **(DRMR (i))**.

8. Taking into account the averments made by the applicant as well as the fact that the other parties did not respond to this application despite service and that the suit is not very old, I am inclined to allow the application with no orders as to costs.

**DATED, SIGNED AND DELIVERED AT MERU THIS 21<sup>ST</sup> DAY OF MAY, 2020**

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**

**ORDER**

The date of delivery of this ruling was given to the parties at the conclusion of the hearing and by a fresh notice by the Deputy Registrar. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17<sup>th</sup> March, 2020 and published in the Kenya Gazette of 17<sup>th</sup> April 2020 as Gazette Notice no.3137, this ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the ***Civil Procedure Rules*** which requires that all judgments and rulings be pronounced in open court.

**HON. LUCY N. MBUGUA**

**ELC JUDGE**