

IN THE HIGH COURT AT NAIROBI

MILIMANI LAW COURTS

JUDICIAL REVIEW DIVISION

MISC. APPL. NO. 461 OF 2008

BETWEEN

ABIUD KITUI WANAKAI APPLICANT

AND

THE CHIEF MAGISTRATE

KIBERA LAW COURTS1ST RESPONDENT

THE DIRECTOR OF CRIMINAL

INVESTIGATIONS DEPARTMENT.....2ND RESPONDENT

THE COMMISSIONER OF POLICE 3RD RESPONDENT

THE ATTORNEY GENERAL4TH RESPONDENT

RULING

1. By the Notice of Motion dated 17th February 2013 the ex-parte applicant seeks an order that the orders of 7th August 2013 be set aside and the Motion seeking orders of judicial review dated 11th November 2008 be fixed hearing.
2. It is not is dispute that when the said Motion came up for hearing on 7th August 2013, counsel for the ex-parte applicant had been served with a hearing notice. In the circumstances, I dismissed the application with costs in the absence of the applicant and his advocate.
3. The applicant now seeks the Court's discretion to set aside the dismissal order on the ground that the mistake was one occasioned by the advocate and not his client.
4. In my view this may be a good reason but the Court has to look at the whole circumstances. In this case, the Motion for judicial review was filed in 2008, about 6 years ago. After the dismissal, the application to set aside was filed about 7 months later. A diligent client would have in the circumstances taken an interest in his case to ensure that it is prosecuted. His attitude appears to stem from either disinterest or as his counsel submitted, an opportunity for him to settle certain liabilities afforded by the shield provided by pending proceedings and the existing orders.
5. My discretion is exhausted. This case cannot be allowed back on the court rolls. The Notice of

Motion dated 17th November 2014 is dismissed with costs.

DELIVERED and DATED at NAIROBI this 4th March 2014

D.S. MAJANJA

JUDGE