



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC JUDICIAL REVIEW APPL. NO. 16 OF 2012

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS OF PROHIBITION
AGAINST MERU CENTRAL DISTRICT LAND DISPUTE TRIBUNAL**

AND

IN THE MATTER OF MERU CENTRAL LAND DISPUTES TRIBUNAL CASE NO. 66 OF 2009

AND

IN THE MATTER OF THE LAND PARCEL NO. NTIMA/IGOKI/1854 AND PLOT NO. T493 MERU MUNICIPALITY

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

CHAIRMAN MERU CENTRAL

DISTRICT LAND DISPUTES TRIBUNAL.....RESPONDENT

RUTH KANARIO RIUNGU.....INTERESTED PARTY

PASTOR MARTHA NKATHA.....EX-PARTE APPLICANT

RULING

1. The application dated **30/8/2018** before me is for the reinstatement of the suit.
2. The suit was dismissed for want of prosecution on **21/2/2018**. The order for the dismissal of the suit was made at the instance of the court. In other words, the court acted on its own motion.
3. The application is supported by an affidavit sworn by Leonard Kimathi advocate for the ex parte applicant. Mr. Kimathi deposes that the matter was scheduled for mention for purposes of confirming filing of submissions on **21/2/2018**; that at the moment the matter was reached he was not present in court and he only learnt later that the matter had been mentioned and dismissed.
4. In urging the court to reinstate the suit, Mr. Kimathi submits that the failure to attend court on **21/2/2018** was not intentional.
5. The interested party has opposed the application through her replying affidavit filed in court on **19/10/2018**. She contends that the application under consideration lacks merit and therefore should not be entertained by this court. The interested party is of the view that the applicant failed to move court appropriately hence the matter was unprosecuted and the court rightly dismissed it.
6. I have perused the record and I do not seem to find a response from the respondent to the application. It would appear that the respondent is not opposed.
7. The issue for determination in the present application is whether there is a basis for the court to exercise its discretionary power to set aside the order of **21/2/2018** and reinstate this suit.
8. A look at **Section 3A** of the **Civil Procedure Act** demonstrates clearly that courts have been given inherent power to make such orders as

may be necessary for the ends of justice to be met. Order **51 rule 15** of the **Civil Procedure Rules** gives the court power to set aside any order made ex parte.

9. The court's exercise of this judicial discretion was laid down in the classical case of **Shah -vs- Mbogo & Another (1967) EA 1116**, where the court stated on the matter of its discretion, that

“The discretion is intended so as to be exercised to avoid injustice or hardship resulting from inadvertence or excusable mistake or error but is not designed to assist a person who has deliberately sought whether by evasion or otherwise to obstruct or delay the course of justice.”

10. In essence, this means that the court's discretion to set aside an ex-parte order of the nature of a dismissal order is intended to avoid injustice or hardship resulting from an accident, inadvertence or excusable mistake or error.

11. I have perused the court record and it is apparent that there was a notice to show cause on **6/12/2017** where the court ordered the respondent to file grounds of opposition within 7 days. The same was not done and until the matter came up on **21/2/2018** which date had been given in the presence of both advocates when the matter was dismissed for want.

12. The other issue that the courts have generally considered before granting orders of reinstatement is whether the application for reinstatement was made without any delays. In the instant suit, it is evident that there was inordinate delay in the lodging of the application. The instant application was filed almost 6 months after the orders of dismissal were issued. It is a wonder that no explanation has been given for the delay.

13. Consequently, I find that the applicant has not been diligent in prosecuting the suit and I therefore dismiss the application dated **30/8/2018** with an order that each party bears its own costs

Dated and signed at Kitale this day of 2019.

MWANGI NJOROGI

JUDGE

ENVIRONMENT AND LAND COURT, KITALE

Delivered in open court at **Meru** on this 31st day of October **2019**

HON. LUCY. N. MBUGUA

ELC JUDGE

JUDGE

ENVIRONMENT AND LAND COURT

MERU