



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

CHUKA MISCELLANEOUS JUDICIAL REVIEW CASE NO. 10 OF 2017

**IN THE MATTER OF APPLICATION FOR JUDICIAL
REVIEW FOR ORDERS OF CERTIORARI**

AND

IN THE MATTER OF APPEAL TO THE MINISTER

APPEAL NO. 141 OF 2017 IN RESPECT TO L.R.

NO. 2340 GATUNGA ADJUDICATION SECTION

REPUBLIC.....APPLICANT

VERSUS

THE MINISTER, MINISTRY OF LANDS,

THROUGH THE SUB-COUNTY

ADMINISTRATOR GATUNGA

ADJUDICATION SECTION.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

SOPHIA GATIRIA KIMENCU.....INTERESTED PARTY

RULING

1. This application is dated 7th February, 2018 and seeks orders that:

1. The honourable court be pleased to hear this application on priority basis.
2. The honourable court be pleased to set aside the dismissal order made on 6.2.2018 and reinstate the main motion for hearing on merit.
3. Costs be provided for.

2. The application has the following grounds:

- A. The suit was dismissed because of the absence of the lawyer for the applicant
- B. The lawyer delayed in attending court in time because his car broke down on his way to the court.

C. If the suit is not reinstated the ex parte applicant will suffer irreparable loss because he cannot file a fresh one this being a judicial review of an order of a tribunal which cannot be done after expiring of 6 months and six months have already expired.

D. The ex parte applicant is likely to lose over 17 acres of land unjustly if the suit is not reinstated.

E. The ex parte applicant should not suffer because of the errors of his lawyer.

3. The application is supported by the affidavit of L. Kimathi Kiara, the ex parte applicant's advocate. It says:

I, L. KIMATHI KIARA ADVOCATE OF P. O. Box 1243-60200 MERU, do make oath and state as follows:-

1. That I am an advocate of the High Court of Kenya and in conduct of this matter.

2. That this matter was fixed for mention on 6.2.2018 for purposes of the respondent and interested parties to file replying affidavit.

3. That when the matter was called out in court I was absent.

4. That as I was driving from Meru town where my offices are located to Chuka town where the court is located a distance of 60 Kms my car broke down around Igoji area and I had to hike a matatu.

5. That by the time I arrived in court at around 11.00pm I found the matter had been called out and dismissed for want of prosecution.

6. That I had asked the applicant to inform the court I was on the way if the matter is called in my absence.

7. That this suit is the only way option left to the applicant to redeem his land which the Tribunal irregularly allocated to the interested party and therefore if he is closed out at this juncture he is going to lose his land and thus suffer irreparable loss and damage.

8. That indeed this being a judicial review for an order of certiorari cannot be fixed a fresh as the six months allowed to file it have since expired.

9. That since this matter had been listed for mention I did not expect a dismissal and the worst that the court was supposed to give another date as the interested party and the respondent had not complied.

10. That I therefore beg the court to reinstate the main motion for hearing on merit.

11. That all what is deposed herein is true to the best of my knowledge, belief and understanding.

4. When the application came up for inter partes hearing, Mr. Kiara told the court that his car broke down on the day the suit was dismissed. He took a matatu and came to court late.

5. I accept the advocates explanation.

6. In the circumstances, the suit is reinstated.

7. The ex parte applicant is directed to serve the following orders:-

a. The ex parte applicant to serve upon the respondents the orders issued by the court today within 5 days of today.

b. The respondents and the Interested Party are directed to respond to the application within 30 days of today.

c. Parties will come to court for directions on **5.3.2018**

8. Costs shall be in the cause.

Delivered in open court at Chuka this **21st day of February, 2018** in the presence of:

CA: Ndegwa

Kimathi Kiara for the Ex parte Applicant

Sophia Gatiria – Interested Party

P.M. NJOROGE

JUDGE