



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

JR CASE NO.165 OF 2002

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW FOR ORDERS OF MANDAMUS PROHIBITION AND CERTIORARI

AND

IN THE MATTER OF THE LAND DISPUTES TRIBUNAL ACT NO. 18 OF 1990

AND

IN THE MATTER OF THE REGISTERED LAND ACT CHAPTER 300 LAWS OF KENYA

AND

IN THE MATTER OF MERU CENTRAL LAND DISPUTES TRIBUNAL CASE NO. 88 OF 2001

AND

IN THE MATTER OF LAND PARCEL NO. NGUSISHI SETTLEMENT SCHEME/357

AND

IN THE MATTER OF MERU LDT NO. 45 OF 2002

REPUBLIC OF KENYAAPPLICANT

VERSUS

THE DISTRICT COMMISSIONER (AS CHAIRMAN) 1ST RESPONDENT

DISPUTES TRIBUNAL2ND RESPONDENT

SIMON MEME PHILI.....3RD RESPONDENT

JACOB MUNYUA M'MBWII EXPARTE APPLICANT

RULING

1. This suit was dismissed on 9.11.2017, thereafter, an application was filed on 1.12.2017 seeking for the reinstatement of the same. The main ground in support of the application is that the suit did not suffer want of prosecution and hence it was not ripe for dismissal.

2. The application is opposed by both the respondent and the interested party. On 4.4.2018 the court gave directions for the application to be heard by way of written submissions. Such submissions have duly been filed and I have considered the same.

3. I have analyzed the basis upon which this suit was dismissed on 9.11.2017. On 4.5.2017 this court gave directions as follows: **“directions are given for the main judicial review motion to be heard by way of written submissions. Mention for submissions on 5.6.2017. AG to be served”**.

4. The court was not sitting on 5.6.2017 and hence there was no mention of the matter. Thereafter the exparte applicant did not move the

court at any one time to get directions on the case. It is the respondent who took the initiative on 14.9.2017 to request for audience before the court and a date for submissions was given on 9.11.2017. The respondent duly effected service upon the counsel for exparte applicant.

5. On 9.11.2017, there was no appearance for the exparte applicant despite the fact that service had been effected. The court proceeded to make the following observations; **“On 4.5.2017 the court gave directions for the JR to be heard by way of written submissions. The submissions were to be availed on 5.6.2017. To date the submissions of the exparte applicant have never been filed which means that the case for exparte applicant has not been argued”**. It is against this background that the court proceeded to dismiss the suit.

6. Order 12 rule 7 of the Civil Procedure Rules states 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”**.

7. The operative word is MAY which invokes the discretion of the court. The case for exparte applicant was to be heard by way of written submissions but such submissions were not filed by 5.6.2017 or even by 9.11.2017. No plausible or even any explanation was advanced by the exparte applicant as to why there was noncompliance with the courts orders of 4.5.2017. I therefore find nothing unprocedural in having this matter dismissed for want of prosecution.

8. Secondly, I note that this JR case was filed way back in 2002. 16 years down the line, the Ex-parte has not shown any vigilance in having the matter conducted. The court also takes judicial notice that the case backlog menace is one of the most serious issues that the judiciary has undertaken to tackle. It is quite apparent that the issue of backlog is not only tainting the image of the Judiciary but it also erodes public confidence in the Judiciary. It is not lost to this court that Judicial Review cases are usually disposed off by way of submissions without hearing oral evidence which means that the trial or the lifespan of the suit should not take long. Further, I note that in 2015, the interested party had apparently made an application to have the suit dismissed for want of prosecution but thereafter, the exparte applicant was indulged by the interested party and respondent and that application was apparently abandoned.

9. Against this background, the exparte applicant ought to have been at the forefront of ensuring that the case is speedily prosecuted.

10. I find no reasons to review the orders of 9.11.2017. The application of 1.12.2017 is hereby dismissed with costs to interested party and the respondent.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 11TH DAY OF JULY, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Kiongo for respondent

Mutegi for exparte applicant

Muchomba holding brief for Miss Kiome for Interested party.

HON. LUCY. N. MBUGUA

ELC JUDGE