



REPUBLIC OF KENYA

IN THE ENVIROMENT AND LAND COURT

AT MERU

JUDICIAL REVIEW NO. 14 OF 2017

REPUBLIC.....APPLICANT

-VS-

THE DISTRICT LAND ADJUDICATION

AND SETTLEMENT OFFICER

TIGANIA EAST SUB COUNTY.....RESPONDENT

ANDREW KINYUA MUKIRI.....INTRESTED PARTY

TERESINA KARAMBU JOEL

(Suing as a Legal Representative of the

Estate of JOEL M’ IMIKI M’ ETIRIKIA.....EX-PARTE APPLICANT

RULING

1. The Application dated 12th March 2018 is seeking orders for the setting aside of the orders made on 21st February 2017, dismissing the Ex-parte Applicant’s suit (Notice of Motion dated 24th April 2017). Applicant is also seeking leave to file additional list of documents.
2. The application is supported on the grounds on the face of it and on the affidavit sworn by the Applicant. Applicant avers that the delay in filling the written submissions was because he came into possession of important and relevant documents from the District Land Adjudication and Settlement Officer ((DLASO), which would assist this court in making proper findings and passing a correct, fair and just judgment.
3. The application was opposed via a replying affidavit filed in court on 26th March 2018, by the Interested Party who deposed inter alia that no other provisions of the law were applicable in judicial review matters except Order 53 of the Civil Procedure Rules and Sections 8 and 9 of the Law Reform Act because the jurisdiction applicable in judicial review matters was *sui generis*. The Interested party further deponed that the order made on 1st November 2017, requiring the ex parte applicant to file submissions on the main motion within 14 days had a rider that belatedly filed submissions would not be accepted which order was made by consent. The interested party also states that on 29th January 2018 when matter was being mentioned to confirm the filing of submissions, Ms. Mamu Counsel for the ex parte Applicant offered no explanation why her client’s submissions were not filed, thereby prompting his advocate to apply for dismissal of the matter for non compliance with the orders of 1st November 2017. He further contended that on 29th January 2018, when the court slated delivery of ruling on 21st February 2018, in the presence of the parties herein, neither the ex-parte Applicant nor her advocate appeared in court on 21st February 2018, when the matter was dismissed.
4. The application was further opposed via grounds of opposition filled in court on 4th April 2018, by the Respondent who contended inter alia that no plausible explanation had been tendered for non compliance with court orders.
5. It was submitted for the Applicant that the mistakes of her advocate should not be visited upon her since her advocate got held up at Garbatulla.
6. On the other hand, it was submitted for the Interested Party that the order of certiorari sought in the already dismissed main judicial review motion had been overtaken by events because the decision had been fully implemented. It was further submitted that the prayer for leave to

file additional documents could not be granted because on 1st November 2017, directions were taken by consent of all counsel that the judicial review motion was to be heard by way of written submissions and the Applicant did not seek leave to file further affidavit or annex any documents hereto before embarking on writing submissions.

7. I have carefully considered this application and the rival submissions of the parties. It is indeed not in dispute that on 1st November 2017, the court in the presence for all parties directed the substantive Notice of Motion dated 24th April 2017, be heard by way of written submissions within set timelines.

8. It is also not in dispute that the Applicant's suit was dismissed on 21st February 2018, for want of compliance with the orders issued on 1st November 2017, requiring the parties to file written submissions without fail. This was a period of about 3 months from date of issuance of the said orders. The Applicant contended that the reason for the delay was because the Applicant had come into possession of important and relevant documents from the DLASO. The Applicant did not however state **when she allegedly came into possession of these important and relevant document and at what point in the lifespan of the suit she was intending to introduce the said documents**. It is on record that Ms. Maamu was actually present and was holding brief for Nyakwara for the Applicant on 29.1.2018, and she did not inform the court of the alleged discovery of important and relevant documents. There was no appearance for the Applicant on 21st February 2018 when the matter was slated for ruling.

9. In **Constitutional Petition Meru ELC NO.14 of 2017, Isiolo Stage Viewers Enterprises vs. Isiolo County Government & Another**, I stated that ;

“Time standards help courts to closely manage and monitor the processing of cases from filing to conclusion. Further, time standards set defined targets for the completion of key process steps and events, establish overall goals that judges and lawyers must meet, create the expectation of what constitutes timeliness, and are essential to eliminating and avoiding case backlogs. The standards reflect a commitment by the courts to complete cases promptly, and also reflect what court users’ regard as a reasonable time for the resolution of case... The net effect of non-compliance with the set timelines is delay, creation of backlog, more acrimony and even confusion”.

10. In **Simion Waiti Kimani & Three others vs Equity Building Society (2010)** Koome J stated as follows;

“The courts have discretion generally to reinstate a suit which is dismissed for non attendance but in all matters involving the exercise of the courts discretion, it must be exercised judiciously based on facts and law. The party seeking to reinstate the suit must also demonstrate good faith and the application should be brought to court without unreasonable delay...”.

11. In **Alice Mumbi Nganga vs Danson Chege Nganga & Another (2006)** Eklr. Kimaru J stated thus;

“This court has unfettered discretion to set aside any order which was entered ex parte. This discretion however, has to be exercised judicially. The applicant must satisfy this court that she has good reasons why she failed to attend court when the said application for dismissal was heard and determined in her absence.In the first place, she cannot blame her counsel who was then on record for failing to attend court when the said application was listed for hearing. This court has ruled in several cases that a civil case once filed, is owned by a litigant not his advocate. It behoves the litigant to always follow up his case and check its progress. He cannot come to court and say that he was let down by his advocate when a decision adverse to him is made by the court due to lack of diligence on the part of his advocate. I think it has been ruled by the Court of Appeal that where an advocate fails to prosecute a case to the satisfaction of his client then such a litigant has an option of suing such an advocate for professional negligence. The mistake of counsel will not, per se, make this court to exercise its discretion in favour of an aggrieved litigant.”

12. In the case of **Peter Kinyari Kihumba vs Gladys Wanjiru Migwi & Another C.A Civil Application No. NAI 121 of 2005 (6/05NYR)** (unreported) **Waki J.A**, held that;

“ With respect, I think the applicant and his counsel adopted a casual attitude to this litigation and they have no one but themselves to blame if no further indulgence is extended to them. The plea they made is that this is a land matter, but the simple answer is that even in land matters there must be an end to litigation....”.

13. I fully associate myself with the sentiments expressed by the Learned Judges in the above cited cases. Taking into totality all the circumstances in this case, and in absence of any reasonable explanation as to why the orders of 1st November 2017, were not complied with, I find that the application dated 12/3/2018 is unmeritorious. The same is dismissed with costs to the Respondent and the interested party.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 8TH NOVEMBER, 2018 IN THE PRESENCE OF:-

C/A: Janet

Maamu for applicant

Kiongo for respondent

C.P Mbaabu for Interested Party

Exparte applicant

Interested party

HON. LUCY. N. MBUGUA

ELC JUDGE