



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA MISC JUDICIAL REVIEW CASE NO. 1 OF 2017

FORMERLY MERU MISC CIVIL APPLICATION CASE NO. 38 OF 2011

KIREA IGURURIA.....PETITIONER

VERSUS

THARAKA DISTRICT LAND DISPUTE TRIBUNAL & 2 OTHERS....RESPONDENTS

RULING

1. On 21st June, 2017, Miss Kungu, for the Attorney General asked the court to dismiss this suit for want of prosecution. She said that on many occasions the exparte applicant had been granted orders to serve the interested party with orders issued by this court.
2. Miss Kungu told the court that the exparte applicant obtained exparte orders on 8th June, 2011 but did not take any step until 13th May, 2014 over 3 years later when he obtained a hearing date for the hearing to take place on 4th September, 2014 but never served the other parties.
3. Miss Kungu told the court that the exparte applicant for almost after two more years never took any step until on 2nd February, 2016 when he obtained a date for the matter to be heard on 10th March, 2016.
4. Miss Kungu lamented that the exparte applicant had abused the court process by delaying the hearing of this suit and continuing to enjoy exparte orders obtained 6 years ago. She asked the court to dismiss this suit for lack of prosecution and for failure by the exparte applicant to obey court orders several times.
5. Upon my perusal of the apposite file, I note that it is true that on 8th June, 2011, the exparte applicant obtained an exparte order granting him leave to seek the Judicial Review Order of prohibition to remove into this court and to prohibit the execution and / or implementation of the award made by the 1st respondent on 25th June, 2009 vide Land Dispute Tribunal Case No. 40 of 2009 adopted as judgment of the 2nd Respondent on 28th April, 2010 vide Marimanti S.C.M L.D.T. No. 4 of 2010 and its subsequent decree issued on 25th January, 2011. The leave granted by the court was ordered to be a stay of execution and / or implementation of the challenged actions.
6. On 24th May, 2016 on his own oral motion the exparte applicant moved the court to have the main application heard and he was granted 14 days to file and exchange his written submissions in support of his case. He was also ordered to serve the respondents and the Interested Party with the orders issued by the court. He was further ordered that upon closure of submissions or after 28 days stipulated in the order issued by the court, he was to obtain a date for directions from the registry.

7. I am unable to find that he obeyed the court orders by serving the respondents and the Interested Party with the orders the court had issued. I, however, find that he did not file and exchange written submissions in support of his case within the stipulated time. This is because for nearly one year, the ex parte applicant had taken no step towards prosecution of this case. Hence on 1st March, 2017 the court on its own motion issued notice for parties to come to court for directions on 15th March, 2017.

8. On 15th March, 2017, the ex parte applicant's advocate asked the court to grant him 7 days to file and exchange his written submissions. The court obliged him. The other parties were given 7 days after receipt of the ex parte applicant's submissions to file and exchange their submissions. Of course the respondents and the interested party could not file their submissions in answer to the ex parte applicant's submissions until the ex parte applicant had served them with his submissions. He had not done so.

9. On 29th March, 2017, the advocate holding brief for the ex parte applicant's advocate, owned up that the ex parte applicant had indeed not filed and exchanged his submissions nor served the parties as had earlier been ordered by the court. He asked for 21 days to file and exchange his submissions and serve the other parties with the orders that the court had ordered him to serve them. The court allowed him 21 days to do so.

10. On 21st June, 2017, the ex parte applicant and / or his advocate did not come to court. He had not served the other parties with the various orders that the court had ordered him to serve upon them. He had also not filed and exchanged his written submissions as ordered by the court on a number of times. This despite that he is the one who moved the court on 24th May, 2016 to allow him to file and exchange his written submissions.

11. The law directs this court to have disputes settled expeditiously. It is not in order for a litigant in a Judicial Review matter to continue enjoying ex parte orders for over six years even as he delays the disposal of the suit he filed. I do note that after he obtained ex parte orders on 8th June, 2011, the ex parte applicant did not take any step to prosecute his case until almost 3 years later when he obtained a hearing date to take place on 4th September, 2014, which hearing did not take place. Indeed there is no evidence that this date was served upon the respondents and the interested party.

12. The ex parte applicant took almost 2 years to take another step towards prosecution his case. On 2nd February, 2016 he obtained a hearing date to take place on 10th March, 2016. Of course what followed thereafter was a litany of disobedience of court orders by the ex parte applicant, some of which had been obtained at his instigation.

13. I find that the ex parte applicant has abused the court process. By so doing the ex parte applicant has enjoyed ex parte orders for over 6 years. He has with alacrity disobeyed court orders. Court orders cannot be issued in vain. Disobedience of court orders strikes at the very heart of the authority and integrity of a court of law. It should be deprecated. It unconscionably delays resolution of disputes. Justice delayed is justice denied. Ineluctably litigation must come to a close.

14. For abuse of the court process and for disobedience of court orders by the ex parte applicant, this suit is dismissed.

15. Costs are awarded to the respondents.

16. No costs are awarded to the Interested Party as there is little evidence that she, in any meaningful manner, participated in the apposite proceedings.

17. It is so ordered.

Delivered in open court at Chuka this **27th day of June, 2017** in the presence of:

CA: Ndegwa

Parties absent

P.M. NJORGE

JUDGE