



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CONSITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO.454 OF 2018

PERISTER KWAMBOKA OMWENGA

T/A P. K. OMWENGA AND ASSOCIATES PETITIONER/APPLICANT

VERSUS

DIRECTOR CRMINAL INVESTIGATION DEPARTMENT.....1ST RESPONDENT

CHINA ROAD AND BRIDGE CORPORATION LIMITED.....2ND RESPONDENT

KITEI PETER 3RD RESPONDENT

AND

JOHN MERCERINO KIMATHI 1ST INTERSTED PARTY

THE LAW SOCIETY OF KENYA 2ND INTERESTED PARTY

RULING

1. This matter came up for mention on 31st May, 2021 before Justice Korir when both advocates and parties were absent. The court noted that their absence was despite having been served with mention notices. It was therefore directed that a dismissal notice be issued for 26th October, 2021.
2. The matter later came up for mention when both parties were represented including Peter Kitei “A” and “B”.
3. In the meantime the petitioner filed an affidavit dated 27th October, 2021 in response to the dismissal notice. She explains how she and her advocate were unable to join the virtual hearing platform, due to internet challenges. She pleads for another chance to be heard.
4. In response Mr. Agwara who had not been served with the affidavit, said this matter had been dismissed before, and same issues raised. He called on the court to dismiss the petition since the prosecution of the matter in issue had progressed. He adds that timelines had been issued but were not complied with.
5. In a rejoinder M/s Omwenga for the petitioner admitted that the matter had been dismissed for non-attendance and not want of

prosecution. She submitted that the criminal case which touches on over 300 persons was yet to be prosecuted. She prayed for a chance to be heard.

6. I have perused this file and note that the petition was filed on 14th December, 2018. It was dismissed for want of prosecution on 16th January, 2020 and not non-attendance as claimed by M/s Omwenga for the petitioner.

7. It is not clear what happened on 19th March, 2020 when the matter was to come up for hearing. The record shows that the matter next came up on 9th July, 2020 when both counsel were absent and it was to be mentioned on 18th November, 2020. On the said date only counsel for the 1st respondent was present and another mention date set for 1st March 2021. On this date all Advocates and the parties were absent and a further mention date was given for 31st May, 2021.

8. Again on 31st May, 2021 none of the parties nor advocates attended court. The court directed for a dismissal notice to issue. It is that Notice that the court is now addressing.

9. The analysis above shows that both parties have not been serious about this matter. However, it is the petitioner who carries the heavier burden because it is her who filed this petition and brought all the other parties to court. She is the one who should move the court for purposes of hearing her case.

10. Directions were issued by the court on 3rd December, 2019 on how the petition should proceed. From the record it is only the 2nd and 3rd respondents (Peter Ketei B) who have filed submissions. I am giving the petitioner one **last chance** to prosecute her claim. Those who are yet to comply with the court directions to do so within 30 days.

11. Mention on 19.01.2022 to confirm compliance and further directions. As earlier directed by the court Peter Kitei “A” & “B” should be present on the said date. These directions to be served by the petitioner on all parties.

Orders accordingly.

Delivered online, signed and dated this 18th day of November, 2021 in open court at Milimani Nairobi.

H. I. ONG’UDI

Judge of the High Court



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