



**Karatina Municipal Council v Karoki (Civil Appeal 45 of 1999)
[2024] KEHC 16330 (KLR) (20 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16330 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CIVIL APPEAL 45 OF 1999
MA ODERO, J
DECEMBER 20, 2024**

BETWEEN

KARATINA MUNICIPAL COUNCIL APPELLANT

AND

KANYI KAROKI RESPONDENT

RULING

1. Before this Court is the Notice of Motion application dated 17th July 2024 by which the Applicants seek the following orders:-
 - “1. Spent
 2. Spent
 3. That this Honourable Court be pleased to set aside and/or vacate the exparte orders made on the 3rd July 2024 and the proceedings thereof allowing the Applicant/Respondent, Notice of Motion dated 24th March 2024 and the said application be heard on merit.
 4. That the cost of this application be provided”
2. The application which was premised upon order 12 Rule 7, Order 17 Rule 3 and Order 51 Rule 1 of the Civil Procedure Rules, Sections 1A, 1B and 3A of the *Civil Procedure Act* and all other enabling provisions of the law and was supported by the Affidavit of even date sworn by Geoffrey G. Mahinda an Advocate of the High Court of Kenya.
3. The Respondent Kanyi Karoki filed a Replying Affidavit dated 25th July 2024 opposing the application.



4. The matter was canvassed by way of written submissions. The Applicants filed the written submissions dated 25th September 2024, whilst the Respondent relied upon his written submissions which were not dated.
5. The genesis of this application are the orders which were made by this court on 3rd July 2024. The Applicants aver that their Advocate had inadvertently misdiarised the date and for that reason neither the Applicant nor their Advocate appeared in court on that date.
6. The Applicants state further that the date of 3rd July 2024 had been allocated down for mention of the matter. That the court was misled into believing that the matter was for hearing and therefore proceeded to issue orders ex parte which orders were prejudicial to the Applicants.
7. On his part the Respondent avers that the Applicants are not being genuine, that they are defiant contemnors. The Respondent urges that the present application has no merit and ought to be dismissed.

Analysis And Determination

8. I have carefully considered the application before this court, the reply filed thereto as well as the written submissions filed by both parties.
9. I have carefully perused the record of the relevant proceedings in this matter. On 23rd May 2024 the court directed the Applicants to file and serve their reply to the application dated 24th March 2024. A date was set for 'mention' on 3rd July 2024 to confirm compliance.
10. On 3rd July 2024 the Respondent appeared in person. There was no appearance by the Applicants. The Court then proceeded to allow the application dated 24th March 2024.
11. Counsel for the Applicant's averred that he had inadvertently misdiarised the date and for that reason did not appear in court on 3rd July 2024. He urges the court not to penalise his client for the errors of the Advocate.
12. The fact of the matter which is clearly borne out by the record is that the date of 3rd July 2024 was a mention date to confirm that the Applicants had filed their reply to the application dated 24th March 2024. The matter had not been listed for hearing of the application on that date.
13. The court erred in proceeding to consider the application on a date set for mention. This was prejudicial to the Applicants as orders were issued against them Ex Parte.
14. I therefore find merit in this application. I review and set aside the orders made on 3rd July 2024. I direct that the application dated 24th March 2024 be set down for hearing.

DATED IN NYERI THIS 20TH DAY OF DECEMBER, 2024

MAUREEN A. ODERO

JUDGE

