

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL CASE NO. 94 OF 2017

NISHIT RAIKUNDALIA.....1ST PLAINTIFF

SAWAN RAIKUNDALIA.....2ND PLAINTIFF

VERSUS

SOL ELECTRONICS KENYA.....1ST DEFENDANT

VINOD SATPUTE.....2ND DEFENDANT

RAJESH RAMESH.....3RD DEFENDANT

RULING

1. The application dated 1st October, 2020 seeks orders that **the order issued on 16th September, 2020 by the honourable court dismissing the Defendant's Notice of Motion dated 29th October, 2019 for non-attendance be set aside and the application be reinstated for hearing on its merits interpartes.**
2. It is stated in the grounds and the affidavit in support of the application that the Applicants' Advocate was unable to join the virtual court due to technical hitches. The Applicants urged the court to allow them to ventilate their application on merits.
3. The application is opposed. It is stated that the application sought to be reinstated has no merits. The Respondent's saw the Applicants' conduct in this matter as aimed at delaying the suit.
4. The Applicants filed a supplementary affidavit in response and contended that the application sought to be reinstated has merits and explained the time taken to establish the position of the proceedings herein as due to the COVID 19 pandemic challenges.
5. I have considered the application, the response to the same and the written submissions filed by the respective counsel for the parties.
6. Since the commencement of the virtual court proceedings due to the COVID 19 Pandemic, there are various challenges and some parties have been unable to join the proceedings. The application at hand was filed without unreasonable delay. The mistake by counsel is therefore excusable and this court is inclined to hear the matter on merits. I will leave the issue of whether the application dated 29th October, 2019 is meritorious to the hearing of the same.
7. With the foregoing, I allow the application with costs in cause.

Date, signed and delivered at Nairobi this 25th day of Feb., 2021

B. THURANIRA JADEN

JUDGE