



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**MISCELLANEOUS CRIMINAL APPLICATION NO. 103 OF 2018**

**SALIM KHAMIS TAKDIR .....APPLICANT**

**VERSUS**

**REPUBLIC..... RESPONDENT**

**RULING**

1. The application dated 24<sup>th</sup> January, 2019 seeks the following orders:-

(i) Spent;

(ii) That the orders made on 27<sup>th</sup> August, 2018 dismissing the applicant's Notice of Motion be set aside and the application be reinstated; and

(iii) That the costs of this application be in the cause.

2. The application is supported by the affidavit of G.A. Okumu, Advocate sworn on 24<sup>th</sup> January, 2019. I have perused the said affidavit which in my understanding is indicative of the fact that the applicant and/or his Advocate was/were aware that the application dated 2<sup>nd</sup> August, 2018 was coming up for mention on 27<sup>th</sup> August, 2018. It was mentioned before the duty Judge, Hon. P.J. Otieno. The applicant and/or his Advocate did not attend court. The matter was dismissed for want of attendance.

3. The Director of Public Prosecutions through an affidavit sworn by Ms Ocholla, Prosecution Counsel, on 5<sup>th</sup> March, 2019 opposed the application for the reason that the applicant and his Advocate failed to attend court on 27<sup>th</sup> August, 2018. She also deposed to the fact that the application dated 2<sup>nd</sup> August, 2018 had been certified as urgent by Chepkwony Judge and the respondent was given time to file a replying affidavit and to appear before the said Judge on 20<sup>th</sup> August, 2018 for hearing of the said application. The court was however on vacation which prompted the matter to be taken to the Deputy Registrar who assigned it a mention date for 27<sup>th</sup> August, 2018.

4. I have considered the averments by both parties and having gone through the affidavit by Ms Okumu Advocate, no attempt has been made to explain the reason as to why she or her client failed to appear before Hon. Judge P.J. Otieno on 27<sup>th</sup> August, 2018. This was pursuant to the directions by the Deputy Registrar, for mention of the application dated 2<sup>nd</sup> August, 2018.

5. This court notes that it was within the powers of Judge P.J. Otieno to dismiss the said application as he did, for want of attendance. No compelling reason has been advanced as to why I should reinstate an application that was dismissed by failure of the applicant or his Advocate to attend court.

6. The application dated 24<sup>th</sup> January, 2019 is hereby dismissed, with no order as to costs.

**DELIVERED, DATED and SIGNED at MOMBASA on this 26<sup>th</sup> day of April, 2019.**

**NJOKI MWANGI**

**JUDGE**

**In the presence of**

Mr. Odundo holding brief for Ms Okumu for the applicant

Ms Ogwen, Principal Prosecution Counsel for the DPP

Appellant present in person

Mr. Oliver Musundi – Court Assistant