



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISC APPLICATION NO. 90 OF 2018

FREDRICK OLUOCH ODUOR.....APPLICANT

VERSUS

CHANNAN AGRICULTURAL CONTRACTORS LIMITED.....1ST RESPONDENT

KIBOS SUGAR & ALLIED INDUSTRIES LIMITED.....2ND RESPONDENT

RULING

1. By a notice of motion dated 17.7.18 brought under Sections 1A, 1B, 3 and 3A of the Civil Procedure Act and Order 51 rule 1 & 15 of the Civil Procedure Rules, the applicant prays for orders: -

1)Spent

2) THAT this Honourable Court be pleased to set aside the orders of 11.7.18 dismissing the application dated 22.5.18

3) That upon granting prayer (2) above, the Honourable Court be pleased to reinstate the application dated 22.5.18

4) Costs be provided for

2. The application is based on the grounds among others that applicant's advocate had sent another advocate to hold his brief and that advocate did not respond when the matter was called out. The application is also supported by an affidavit sworn on 17.7.18 by Maureen Akoth Okumu, advocate for the applicant who reiterates the grounds on the face of the application.

3. The application is opposed on the grounds set out in the grounds of opposition dated and filed on 26.7.18. Respondent contends that this application was brought with unreasonable delay.

4. I have considered the notice of motion in the light of the supporting affidavit grounds of opposition. This application was filed 6 days after the dismissal order. It was therefore filed without delay.

5. The applicant's counsel has explained, to the satisfaction of the court, the circumstances that led to the dismissal. It should be the court's last resort to deny a party a chance to be heard on the basis of mistake by counsel. The overriding objective of the law is to facilitate the just, expeditious, proportionate and affordable resolution of disputes. Under the powers granted to this court by section 3A of the Civil Procedure Act, the notice of motion dated 8.8.16 is allowed and application dated 22.5.18 is reinstated for hearing. The applicant is condemned to pay Kshs 2,000/- to the respondent as throw away costs.

DATED AND DELIVERED AT KISUMU THIS 31ST DAY OF JULY 2018

T.W. CHERERE

JUDGE

Read in open court in the presence of-

Court Clerk - Felix

Applicant - Ms. Omolo h/b for Ms/ Okumu

Respondent - N/A