



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

MISCELLANEOUS CASE NO. 131 OF 2017

STEPHEN VICKER MANGIRA.....APPLICANT

VERSUS

DIRECTOR OF CRIMINAL INVESTIGATIONS

HEADQUARTERS THROUGH THE DPP....1ST RESPONDENT

ASSETS RECOVERY AGENCY.....2ND RESPONDENT

BAKARI KILA BAKARI.....3RD RESPONDENT

AND

ALI CARS LIMITED.....INTERESTED PARTY

RULING

This is a ruling in respect of an application by Mr. Wamotsa counsel for the state, seeking to have the application dated 10th day of July 2017 by the Applicant dismissed on the ground that the applicant and his counsel had not attended court, despite the hearing date having been fixed by consent of all parties.

In response to this, Mr. Magolo, advocate, told court that the applicant was aware of the hearing date and had called him the day before to request him to appear for him. He then indicated to court that he was unable to do so and proceed for he had not seen any documents from the other lawyer. He argued that it would be drastic for the applicant if the application is dismissed.

Mr. Wamotsa, learned counsel for the state submitted that Mr. Magolo was a stranger in the matter since the applicant, who is fully represented by an advocate, had not served them with a notice of change of advocate.

In consideration of the application by the learned counsel for the state, I find that there is no dispute that the applicant filed his application of 10th July, 2017, through Mr. Wachira advocate, who has since been on record.

It is also not in contention that after the filing of the pleadings, the hearing of the application was fixed for 25.8.2017 by consent of all counsels on the 28th day of July, 2017.

On the hearing date, neither the applicant nor his advocate attended court. However Mr. Magolo, learned counsel, shot up and informed court that the applicant had called him the previous evening to request him to appear for him. He stated that he was not in a position to since he had not seen the documents relating to the matter from the other lawyer.

It is not in dispute that Mr. Magolo, while alleging to have such instructions from the applicant, did not notify the court that the Applicant intended to change his advocate and he was therefore coming on record for him.

What I also found interesting is that Mr Magolo had no instructions on what to address the court on or explanations as to why the Applicant had not attended court on this day which had been fixed by consent of all the parties.

A considerations of Mr. Magolo's address to court with regard to the matter is that it was so casual, which is not reflective of "a person interested in pursuing his case" (as put by the said counsel).

There is procedure and practice on how counsel or advocates come on record in cases when they have received instructions to represent parties. I find this lacking in the manner in which Mr Magolo addressed court.

In line with my findings, I find that, the hearing date having been taken by consent of all parties, and there being no appearance by either Applicant or his advocate or explanation as to their absence, the respondent's application has merit.

I hence proceed to allow the application by the Respondents counsel and dismiss the application dated 10th July, 2017 for non attendance by the applicant and his advocate on the hearing date.

There shall be no orders as to costs.

It is so ordered.

Delivered, signed and dated this 19th day of September 2017.

D. O. CHEPKWONY

JUDGE

In the presence of:

Mr. Wamotsa for the state

No appearance by Applicant or counsel

C/clerk- Mr Beja Nduke