



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIVASHA**  
**CIVIL APPEAL NO. 21 OF 2015**  
*(Being an Appeal from Naivasha CMCC No. 666 of 2014)*

**MILKA WAITHERA THUO.....APPELLANT**

**-VERSUS-**

**VISION FUND KENYA (NAIVASHA).....1<sup>ST</sup> RESPONDENT**

**SUPERVIEW INVESTMENTS.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before me is the Appellant's application dated 4<sup>th</sup> March, 2015 seeking the reinstatement of her application dismissed on 2<sup>nd</sup> March 2015 for non-attendance. Counsel for the Respondent Mr. Mburu has correctly taken issue with the invocation of a non-existent order of the Civil Procedure Rules in the Notice of Motion. However, the court is enjoined under Article 159 (2) d) of the Constitution not to give undue attention to procedure.
2. That said, I note also that the application sought to be reinstated was also brought under a non-existent order of the Civil Procedure Rules. The said application was seeking leave (already granted on 16/2/2015) to file an amended Notice of Motion, which amended application was also filed alongside that application.
3. The application for amendment was unnecessary in the circumstances. However, even assuming that the court would have proceeded to consider the substance of the "amended chamber summons" if the Applicant had been present, the same also invokes a non-existent order of the Civil Procedure Rules and again seeks leave to amend "documents.....stay of execution and an objection to attachment" (sic).
3. This is all too confusing, even giving allowance for the fact that the Applicant is acting in person. If the technical aspects are wanting, the substance of the application filed on 4<sup>th</sup> March, 2015 is confounding. In seeking that the dismissal order of 16/2/2015 be set aside the Applicant swore an affidavit claiming that she was taken ill on 1<sup>st</sup> March 2015, treated at Naivasha District Hospital and advised to rest. To this end she annexed a photocopy of a treatment chit bearing outpatient number 6020/2015 allegedly treated at the hospital on 2/3/2015.
4. Firstly at paragraph 4 of the affidavit the Appellant was allegedly treated at the hospital on 1<sup>st</sup> March 2015 and not 2<sup>nd</sup> March 2015 as her treatment chit purports. For their part, the Respondents have

countered that the chit is dubious. They tendered records in respect of out-patient number 6020/2015, from the said hospital. The record is a computer printout showing the patient to be a male child, seen at the hospital on 15/1/2015. The Respondents dismiss the Appellant's chit as a forgery. In answer, all the Applicant could say was that she got the chit from hospital.

5. I have serious doubts myself after looking at the two rival records that the treatment chit tendered by the Applicant is credible. There are clear signs of erasures in spaces provided for patient particulars, especially name, age and date of treatment. Besides, the document is in seeming medical jargon that does not disclose much to a lay person.

6. An application of the nature brought by the Appellant will ordinarily not be allowed without a proper explanation being offered by the Applicant. Where, as in this case, an Applicant appears not to be truthful in her explanation, the court will be reluctant to exercise its discretion in her favour.

7. I am not satisfied that the Application before me for reinstatement is deserving or even tenable in light of the technical defects therein. I dismiss the application dated 4<sup>th</sup> March with costs to the Respondents. This means that both the applications filed on 17<sup>th</sup> February 2015 remain dismissed with costs.

Delivered and signed at Naivasha this 23<sup>rd</sup> day of **June, 2015**.

In the presence of:

For Applicant

For Respondent

Court Assistant Stephen

**C. W. MEOLI**

**JUDGE**