



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. 430 OF 2014

SALIM IDI MOHAMED SALIM.....APPELLANT

VERSUS

1. NAIROBI CITY COUNTY
2. STEPHEN TOM OKEYO ABEBE.....RESPONDENTS

RULING

1. By an application of notice of motion application dated 22nd October, 2014 under Order 42 rule 6 (1) and (6), Order 50 rule 6 and Order 51 rule (1) of the Civil Procedure Rules and Sections 1A, 1B and 3A of the Civil Procedure Act, the appellant/applicant is seeking the following orders:-
 - i. *Reinstatement of the interim orders of injunction given on 29th September, 2014 which lapsed on 21st October, 2014.*
 - ii. *That the notice of motion dated 26th September, 2014 be given a hearing date on priority.*
2. The application is premised on the grounds set out on the body of the application and the supporting affidavit of Donald O. Owang' advocate.
3. The reasons advanced are that the motion dated 26th September, 2014 was fixed for hearing on 21st October, 2014 but counsel for the parties inadvertently diarised the date as 22nd October, 2014 as a result of which they did not attend court.
4. That it is for that reason that the application was stood over and the interim orders of injunction restraining the Respondents from evicting the Applicant from the premises known as House No. D 31 New Ngara was never extended.
5. There is no replying affidavit on record opposing this application.
6. When this matter came up for hearing on 20th May, 2015, parties agreed and it was adopted as the order of court that this application be dispensed with by way of written submissions. I however note that although the parties stated that they had complied as ordered, the submissions on record relate to the application dated. I do not see order for the hearing of the application dated 26th September, 2014. I shall therefore consider the depositions in the application.
7. It has not been contested that the party's counsel inadvertently mis-diarised the matter. I therefore find that it is in the interest of justice that this application be allowed.
8. This court has severally held that punishing an advocate for every sundry of blunders does not necessarily accord justice to the client.
9. And that Indeed, the main purpose of litigation, namely the hearing and determination of disputes, should be fostered rather than hindered and errors and lapses should not necessarily debar a litigant from the pursuit of his rights under the law by ousting him from the judgment seat. In this case, the applicant timeously filed this application to remedy the situation.
10. In **Philip Kelpto Chemwolo & Another V Augustine Kubende (1986) KLR 492**, the Court of

Appeal was categorical that:

“Blunders will continue to be made from time to time and it does not follow that because a mistake has been made a party should suffer the penalty of not having his case determined on its merits”..... I think the broad equity approach to this matter is that unless there is fraud or intention to overreach there is no error or default that cannot be put right by payment of costs. The court as is often said exists for the purposes of deciding the rights of the parties and not for the purpose of imposing discipline.”

11. In *Mwai V Murai No. 4 (1982) KLR Madan JA* said.

“A mistake is a mistake, it is no less a mistake because it is an unfortunate slip. It is no less pardonable because it was committed by Senior Counsel though in the case of Junior counsel, the court might feel compassionate more readily. A blunder on a point of law can be a mistake. The door of justice is not closed because a mistake has been made by a person of experience who ought to have known better. The court may not forgive or condone it but it ought certainly to do whatever is necessary to rectify it if the interests of justice so dictate.”

12. The speed with which the Appellant filed this application is an indication of good faith and that the application is not meant to defeat the interest of justice or to steal a march on the respondent. In the circumstances, I find that the application has merit and make orders as follows:-

- i. That the interim order of injunction given on 29th September, 2014 which lapsed on 21st October, 2014 be and is hereby reinstated pending further orders of this court.
- ii. That the notice of motion dated 26th September, 2014 be given a hearing date in the registry on priority basis.
- iii. Costs shall be in the cause.

Dated, signed and delivered in open court at Nairobi this 29th day of October, 2015.

R.E.ABURILI

JUDGE