

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL MISC. APPLICATION NO. 721 OF 2012

JOHN KAMAU NDERE.....PLAINTIFF
VERSUS
NDETIKA RURAL SACCO SOCIETY LTD.....1ST DEFENDANT
THE HONOURABLE ATTORNEY GENERAL.....2ND DEFENDANT

RULING

1) On 20th December 2012, this COURT dismissed the motion dated 17.12.2012 for want of attendance on the part of the Plaintiff. The applicant has now taken out the motion dated 28th March 2013 in which he sought for the dismissal order to be set aside thus paving the way for the reinstatement of the same. The motion is supported by the affidavits of Kennedy Otieno Arum and John Kamau Ndere. When served, the respondents filed the replying affidavit of J. G. Kimani to oppose the motion. Learned counsels successfully applied to have the application disposed of by written submissions. When the motion came up for interpartes hearing, the applicants were the only parties who attended court and were also the only parties who had filed their submissions.

2) I have considered the grounds set out on the face of the motion plus the facts deponed in the affidavits filed in support and against the motion. I have also considered the written submissions filed by the Plaintiffs. It is the submission of the Plaintiff's counsel that when the motion was placed for exparte hearing before Lady Justice Ang'awa, he was under the mistaken believe that it would be handled in chambers in the absence of the parties as per the practice introduced by Mr. Justice Hatari Waweru. The Plaintiff's advocate further argued that it was during the court's vacation when he was away to attend his sick mother at their rural home in Siaya hence his absence from court. In the replying affidavit of J. K. Kimani, the respondents did not controvert the contents of the applicants but instead the respondent merely stated that the motion is frivolous, vexatious and amounts to an abuse of the court process.

3) It is not in dispute that the motion dated 17.12.2012 was dismissed for want of attendance. The applicants advocate has explained the reasons why he failed to attend the matter before the court. The first reason is that it has been the practice of this court to have exparte in chamber with matters filed under certificate of urgency. Secondly, that the applicant's advocate had travelled to his rural home in Siaya to attend to his sick mother. The aforesaid grounds have not been controverted. I find those grounds to be plausible.

4) In the end, I find the motion dated 28.3.2013 to be well founded. It is allowed as prayed. Consequently the order issued on 19.12.2012 dismissing the motion dated 17.12.2012 is set aside. The aforesaid motion is reinstated. The same to be fixed for hearing interpartes on priority basis.

5) Costs of the motion to abide the outcome of the motion dated 17.12.2012.

Dated Signed and Delivered in open court this 20th day of November, 2015.

J. K. SERGON
JUDGE

In the presence of:
..... for the Defendant
..... for the Defendant