

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

PETITION NO. 357 OF 2012

SAYIALEI OLE KOILEI.....PETITIONER

VERSUS

LAND REGISTRAR, KAJIADO.....1ST RESPONDENT

SENIOR RESIDENT MAGISTRATE, KAJIADO2ND RESPONDENT

CHAIRMAN LAND DISPUTE TRIBUNAL, KAJIADO.....3RD RESPONDENT

ATTORNEY GENERAL.....4TH RESPONDENT

AND

DANIEL MONIREI.....INTERESTED PARTY

RULING

1. The application dated 1st November, 2012 was filed by the Petitioner herein seeking reinstatement of the application dated 24th September, 2012. It also seeks reinstatement of conservatory orders that had been issued pending hearing and determination of the application.
2. The application is premised on grounds that the advocate who was to argue the application on behalf of the applicant delayed to reach court on time because Mombasa road had been blocked following some riot. Consequently, motorists were blocked from passing for one and a half hours. Conservatory orders had been granted stopping the interested party from dealing with the suit property.
3. The application is supported by an affidavit deponed by **Kiplagat Muita** the advocate who was in conduct of the case. He stated that while travelling to court he encountered a group of rioters along Mombasa Road at City Cabanas who closed off the road which in turn caused a traffic jam. By the time he got to court the matter had proceeded *ex-parte* and the application had been dismissed; without interim orders in force they were apprehensive that the interested party would deal with the property to the detriment of the petitioners.
4. The application is unopposed.
5. In an application dated 24th September 2012 the applicant herein had sought issuance of conservatory orders against the respondent pending hearing of the application. The prayer sought was granted on the 25/9/12. When the application came up for hearing *interpartes* on the 1/11/2012, it was dismissed for want of prosecution. On the same day although time is not indicated, **Mr. Kiplagat**, counsel for the Applicant appeared before the court. It is noted that he notified the court the reason for his late arrival. He proceeded to file the current application on the same day.
6. The reason given by counsel for the applicant for failure to be in court at the required time has not been challenged. I do uphold the fact that substantive justice would demand priority over technical procedures. (*see Article 159 (1) (d) of the Constitution*).
7. Accordingly, I do allow the prayer for reinstatement of the application dated 24th September, 2012. Consequently, the conservatory order issued by the court on 25th September, 2012 pending hearing and determination of the application stand reinstated.
8. Costs of the application shall be in the cause.

DATED, SIGNED and DELIVERED at MACHAKOS this 27TH day of SEPTEMBER 2013.

L.N. MUTENDE

JUDGE