



REPUBLIC OF KENYA
IN THE HIGH COURT
AT NAIROBI
MILLIMANI LAW COURTS
Civil Case 757 of 1994

KASSAM KHIMJI LIMITED..... PLAINTIFF

VERSUS

MERIDIAN PROPERTIES LIMITED..... DEFENDANT

RULING

In the application dated 23/12/2011 the applicant seeks to set aside the ex parte order issued by this court on 13/12/2011 dismissing the suit for want of prosecution.

The application is grounded on that the failure to attend court was inadvertent mistake. And there has not been unreasonable delay. The plaintiff has counter claim and substantial issues ought to be given a hearing. It is in the interest of justice that dismissal order be set aside since no prejudice will be occasioned to defendant. The application is supported by affidavit of Mr. Kanjama which shows the respondents served on his firm Notice of Motion schedule for hearing on 13/12/2011. However due to inadvertence in office the date was not placed in his diary.

Failure to attend court on 13/12/2011 was not deliberate but occasioned by an honest mistake.

The plaintiff has been at all times interested with proceeding with the suit. The suit involves shares of high value and a counterclaim by the defendant. The prosecution was delayed while awaiting a Ruling in court of Khaminwa J.N. Suit No.686 of 2008.

Further there was delay due to the application of new Rules of Civil Procedure. The plaintiff/applicant submitted that it is only just that the dismissal be set aside so that the parties can be given opportunities to be heard.

Upon considering the submissions of both parties I have come to conclude that the applicant was not kept from appearing in court deliberately but it was because of inadvertence in his office. The court

cannot visit the mistake of advocates upon their clients. It is for advocates to run their offices efficiently to facilitate the clients business.

In the circumstances I find that it is just to set aside the dismissal of this suit. The costs will be granted to the respondent in any case.

Orders accordingly.

Dated and delivered at Nairobi this 9th day of May, 2012.

J.N. KHAMINWA
JUDGE
9/5/2012

9/5/2012

Coram: Khaminwa, J

Anne court clerk

2.30 p.m.
Mr. Wetangula for respondent

Ruling read in his presence.

J.N. KHAMINWA
JUDGE
Court

Mr. Wetangula I pray that this file be placed in Commercial Division for further hearing.

Court

Order is granted.

Court

The matter shall be mentioned on 24/5/2012.

Notice to be served.

J.N. KHAMINWA

JUDGE