



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT ELDORET

CIVIL SUIT NO. 64 OF 2009

ANNAH C. RONO PLAINTIFF

VERSUS

THE AGRICULTURAL SOCIETY OF KENYA DEFENDANT

RULING

Essentially, this is an application to set aside and/or review the ex-parte orders issued on the 18th July, 2010 dismissing this suit and have the suit reinstated for hearing on merit. The application is supported by an affidavit dated 24th November 2010 deponed by the applicant's advocate and is opposed on the basis of the facts contained in a replying affidavit by the Chief Executive Officer of the respondent Society dated 14th December, 2010.

Mr. Okoth, learned counsel argued the application on behalf of the applicant while learned counsel, **Mr. Nyaburi** argued it in opposition on behalf of the respondent.

The court has considered the application in the light of the arguments in support of and in opposition thereto and in its opinion, the applicant has not shown good cause for the exercise of discretion in his favour.

Firstly, the reason by the applicant for the failure to attend court on 28th July 2010 leaves a lot to be desired. A boycott of anything is a voluntary exercise. One is not bound to engage in it. Besides, the alleged boycott was not lawful. It may have involved a certain section of the legal fraternity but this did not prevent the applicant himself attending court and probably asking for an adjournment of the matter.

The record shows that on the material 28th July 2010, the applicant's application dated 30th October 2009 was scheduled for hearing along with a preliminary objection filed by the respondent. However, the applicant failed to appear. Consequently, his application was dismissed by the court and the respondent was allowed to proceed with the preliminary objection which was upheld by the court with the result that the applicant's entire suit against the respondent was dismissed.

The objection was based on the jurisdiction of the court to hear and determine the suit.

Considering that both the applicant's application and the respondent's preliminary objection were crucial, it was in-excusable for the applicant and/or his advocate to fail to attend court.

It is not open to a court to assist a party who deliberately sought to obstruct and delay the cause of justice.

Secondly, the applicant has not shown that other than his application, he also had a good case against the respondents' preliminary objection.

On the outset, the objection was not based on mere technicality. It was a matter of the Court's jurisdiction to hear and determine this case. As it is often said, jurisdiction is everything. If a court has no jurisdiction over a matter it has to down its tools.

In sum, this application is not merited. It is hereby dismissed with costs to the respondent.

Ordered accordingly.

J. R. KARANJA
JUDGE

(Read and Signed this 14th day of April 2011 in the presence of Mr. Okoth for applicant Mr. Ngeny holding brief for respondent).