



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL MISCELLANEOUS APPLICATION NO. 834 OF 2011

KHADIJA MOHAMEDPLAINTIFF/ APPLICANT
=VERSUS=
QUINTER AYO O AMULLO DEFENDANT/RESPONDENT

RULING

By this Notice of Motion application dated 18th October 2011 the Plaintiff/Applicant prays inter alia that:

- “(2) The court do review its order made on 26.09.11**
- (3)**
- (4) That the court do vacate its order in respect of Civil Suit 1589/2011 KHADIJA MOHAMED RIDHWAN –VS- QUINTER AYO O AMULLO**
- (5) That any other order be made as the court deem fit”**

MR. KIRUI Advocate acted for the Applicant. The application was opposed with **MR. OWINO** Advocate appearing for the Defendant/Respondent.

On 26th September 2011 the Respondents approached this court by way of a Certificate of Urgency and obtained ex-parte orders staying the proceedings in CMCC 1589 of 2011. It is this ex-parte stay of the proceedings in the lower court that the Applicant now seeks to have set aside. It is clear that aside from the civil matter quoted above criminal proceedings have also been commenced against the Respondent involving the same subject matter. I have carefully considered the submissions made by both counsel in this matter. I do take note of the provisions of S. 193A of the Criminal Procedure Code which provides:

“193A. Notwithstanding the provisions of any other written law, the fact that any matter in issue in any criminal proceedings is also directly or substantially in issue in any pending civil proceedings shall not be a ground for any stay, prohibition or delay of the criminal proceedings”

The effect of this provision is that civil and criminal proceedings involving the same subject matter can proceed simultaneously. One will not take priority over the other. As such I do allow this present application for review and I hereby set aside the ex-parte orders made on 26th September 2011.

Dated and Delivered in Mombasa this 16th day of December 2011.

M. ODERO

JUDGE

In the presence of:

Mr. Wameyo holding brief for Mr. Owino

No appearance by Mr. Kirui