

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
MISC. CIVIL APPL. NO. 61 OF 2008(JR)

LAW SOCIETY OF KENYA

SOUTH RIFT BRANCH..... 1ST APPLICANT

JULIANA CHEPKORIR SULLIVAN 2ND APPLICANT

VERSUS

THE MUNICIPAL COUNCIL OF KERICHO RESPONDENT

RULING

On 28th June, 2010, this court dismissed with costs the Respondent's/Applicant's application dated 7th June, 2010 because the Respondent/Applicant failed to attend court to prosecute it. In the said dismissed application, the Respondent/Applicant had sought an order for temporary stay of execution of the warrant of arrest issued on 14th May, 2010.

The Respondent/Applicant has now in its application dated 30th June, 2010 sought an order to set aside the orders dated 28th June, 2010 which dismissed the application dated 7th June, 2010. The Respondent/Applicant has also sought reinstatement of the dismissed application. In the supporting affidavit and in his submission in Court, Mr. Rugut, the learned counsel for the Respondent/Applicant, explained the circumstances that led to his failure to attend court. He was aware that the dismissed application was coming up for hearing on 28th June, 2010. However, he chose to go to Lanet to do a court martial case. He hoped, he said, that he would return early enough to prosecute the application. But he had no control over how long the Lanet Court martial case would take, and as fate would have it, it protracted and took all the time. He took a gamble. He must take the consequences which he knew all along. This is not a case where one is disabled or prevented from attending court by circumstances beyond his control. Rather, it is a case where one has full control but chooses to drop the less important matter with all the attendant consequences. Nor is this a case of a mistake being made as to the date or time of the hearing. Mr. Orina, learned counsel for the ex parte Applicant/Respondent, opposed the application. In his submission, he urged the court to dismiss the application on the ground that the applicant is attempting to avoid obeying the lawful orders of this court made on 11th June, 2009. He was at a loss in understanding why the Respondent/Applicant had failed to show cause why he had not executed the orders of this court. It was Mr. Orina's submission that the court martial could not take precedence over the High Court. He pointed out that neither Mr. Rugut nor his client was in court when the application was dismissed.

The issue for determination is whether the applicant has shown that there was plausible explanation why he did not attend court when the application was dismissed. It is my finding that the applicant has not shown that there was a reasonable excuse or plausible explanation why he and his client failed to be in court. As the applicant has failed to exhibit sufficient ground to warrant grant of the order sought, I, in the circumstances, dismiss the application with costs.

DATED at KERICHO this 28th day of July, 2010

G.B.M. KARIUKI, SC

RESIDENT JUDGE

C OUNSEL APPEARING

Mr. Rugut of Rugut & Co. Advocates appeared for the Applicant

Mr. Orina of Orina & Co. Advocates appeared for the Respondent