



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Suit 656 of 2009

MKUKI RANCH LTD.....PLAINTIFF
VERSUS
MWAURA BAJITE.....1ST DEFENDANT
BETTY MUINDE.....2ND DEFENDANT
KULDET SINGH.....3RD DEFENDANT
FIRST GREEN GARNET MINING
COMPANY OF KENYA4TH DEFENDANT
MWANGI & COMPNAY LTD.....5TH DEFENDANT
TSAVOLITE MINING COMPANY LTD.....6TH DEFENDANT
KIMOTHO MINING COMPANY LTD.....7TH DEFENDANT
DAVIS MINING COMPANY LTD.....8TH DEFENDANT
THE COMMISSIONER OF MINES GEOLOGY.....9TH DEFENDANT

RULING

1. On the 19th July, 2010, this court dismissed the 1st defendant's chamber summons dated 4th March, 2010, in which the 1st defendant sought to have the plaintiff's suit struck out. The application was dismissed due to non-attendance.
2. The 1st defendant has now come to this court seeking to have the order of dismissal set aside. In an affidavit sworn on 19th July, 2010, Antony Oluoch, who is the 1st defendant's advocate, swears that he was in fact present outside the court, but did not hear when the matter was called out. Counsel pleads with the court to allow the application so that his client is not prejudiced.
3. I have considered the application which was objected to by the plaintiff/respondent. The explanation given by counsel is not very convincing. However, I do note that the mistake was that of counsel and not the 1st defendant. It would not therefore be fair to punish the 1st defendant for the mistake of his counsel. In any case the respondents can be adequately compensated by an award of costs.
4. For the above reasons, I allow the application, set aside the order of dismissal made on 19th July, 2010, and substitute thereof an order of adjournment subject to the 1st defendant paying court adjournment fees and the day's costs to the plaintiff/respondent and the other defendants.

Dated and delivered this 15th day of October, 2010

H. M. OKWENGU
JUDGE

In the presence of: -
Advocate for the plaintiff absent
Ms Ndumia H/B for Oluoch for the 1st defendant/applicant
Njuguna for the 9th defendant
Kosgei - Court clerk