



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
LAND AND ENVIRONMENTAL LAW DIVISION
CIVIL SUIT (ELC) NO.169 OF 2006

KENYA ANTI-CORRUPTION COMMISSION.....PLAINTIFF
VERSUS
NATHANIEL KIPKORIR TUM & OTHERS.....DEFENDANTS

RULING

1. The Kenya Anti-Corruption Commission, who is the plaintiff in this suit, seeks to have the order made by this court on 17th May, 2010 dismissing the plaintiff's notice of motion dated 21st February, 2006, set aside and its application dated 21st February, 2006 reinstated and heard on merit.
2. The application dated 21st February, 2006 was dismissed on 17th May, 2010 as there was no attendance on behalf of the applicant. The applicant's counsel David Ruto has sworn an affidavit in which he explains that his non-attendance was due to inadvertence caused by pressure of work and the fact that the applicant's executive officer responsible for court matters was away on leave and the matter was not therefore brought to his attention. Counsel explains that he only realized that the matter was in court on the afternoon of 17th May, 2010.
3. The application is strongly opposed by the defendants who maintain that the reason given for failure by the applicant's counsel, to attend court is flimsy and inexcusable, and that the application is an abuse of the court process as there has been inordinate delay in prosecuting the application dated 21st February, 2006 which is sought to be reinstated.
4. I have given due consideration to the application. I find that the explanation given though weak, confirms that the failure to attend court was that of counsel for which mistake the plaintiff ought not to be penalized. Secondly, the applicant has brought the application for setting aside the order of dismissal with due speed and diligence. Thirdly, the application cannot be held responsible for the delay in prosecuting the application dated 21st February, 2006 as same was caused by two year delay by the court in delivering its ruling.
5. For the above reasons, I find that it is appropriate that this court exercises its discretion in the applicant's favour. Accordingly, I allow chamber summons dated 18th May, 2010 and issue orders as prayed.

Dated and delivered this 12th day of November, 2010

H. M. OKWENGU
JUDGE

In the presence of: -
Kagucia for the plaintiff/applicant
Advocate for the defendants absent
B. Kosgei - Court clerk