

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

Civil Case 31 of 2007

DANIEL OGOL.....1ST APPLICANT/APPELLANT

JOSEPH SANG.....2ND APPLICANT/APPELLANT

GORDON OPIYO.....3RD APPLICANT/APPELLANT

VERSUS

JOEL OUMA MUMA.....RESPONDENT

RULING

Before me is a Notice of Motion expressed to be brought under Order L Rules 1 and 17 of the Civil Procedure Rules and Section 3A and 63(e) of the Civil Procedure Act in which the applicant is seeking orders that the order made on 31st July 2007 dismissing the applicant's application for non-attendance herein be set aside and the Applicant's Notice of Motion dated 18th January 2007 be reinstated for further hearing interpartes and that the court on granting prayer 4 above be pleased to reinstate the interim orders which had been granted to the applicants by this Honourable Court on 18th January 2007 and which were in force pending further hearing and determination of the appellant's Notice of Motion.

The application is based on the ground that the application dated 18th January 2007 which was part-heard before the Hon. Osiemo J and which had been properly listed before the said Judge at 2.30 p.m. on 31st July 2007 as per the cause list was inadvertently placed before the Hon. Mr. Justice Aganyanya whereby the court dismissed the same for non-attendance and that the above error/mistake occurred through no fault on the part of the counsel for the applicants and that the same arose due to a mix up in the numbering of cases in the daily cause list by the registry.

The application is also supported by an affidavit sworn by counsel for the applicant. I agree that was the position. There was a mix-up in the numbering of the cases in the cause list and the matter which was part-heard before me at 2.30 pm of that day was inadvertently placed before Aganyanya J. in the morning and hence dismissed for non-attendance.

The applicant's application is therefore allowed in terms of prayer 4, 5 and 6 of the Notice of Motion dated 3rd August 2007. Costs will be costs in the application.

Dated and delivered at Nairobi this 23rd day of May 2008.

J. L. A. OSIEMO

JUDGE