



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT ELDORET**

Civil Appeal 96 of 2007

**PHILIP MWAURA T/A**

**GILLETTE TRADERS AUCTIONEERS ..... APPELLANT**

**VERSUS**

**ISAAC SIMIYU KULOBA ..... RESPONDENT**

**RULING**

The Applicant filed this application by way of Notice of Motion on 25<sup>th</sup> March, 2008 seeking the following orders:-

- (a) That the Court certify the matter as urgent and service be dispensed with.
- (A) That the Court do grant an interim order of stay pending inter partes hearing.
- (b) That the Honourable Court do grant the Appellant stay of execution pending the hearing and determination of the Appeal.
- (c) Costs in the cause.

In the supporting affidavit it is suggested that he said

application is an Amended Notice of Motion. On the face of the Notice of Motion the word “Amended Notice of Motion” does not appear on the heading. However the words “Chamber Summons” appear there and is crossed in red-ink. At the bottom the words “AMENDED at Eldoret this 25<sup>th</sup> March, 2008” is inserted. However, the original date of what appears to be a Chamber Summons is not inserted.

The supporting affidavit sworn by Counsel for the Applicant is bereft of any useful facts. It does not set out the facts to justify the grant of any orders.

The Counsel for the Respondent has taken up all the foregoing points of law.

After hearing both Counsel, I do hold that if the Notice of Motion is supposed to be an Amended application, consequent to the Chamber Summons dated 2<sup>nd</sup> August, 2007 which is still pending, then the said amendment was done without any leave of the Court. It is mandatory that for one to amend any pleadings including applications after the close of pleadings, one must seek and obtain the leave of the Court. In this case no leave was sought or obtained.

The application is irregularly and improperly on the record. This defect is incurable. I do hereby

expunge it from the records of the Court with costs. It follows that the interim orders which was granted by this Court ex parte must be and is hereby vacated.

**DATED AND DELIVERED AT ELDORET ON THIS 19<sup>TH</sup> DAY OF MAY, 2008.**

**M.K. IBRAHIM**

**JUDGE**

**In the presence of:**

Mrs. Chege for the Respondent

Mr. Angu Kitigin for the Applicant