



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT KISII

Civil Suit 278 of 1998

MOSOTA OTWORI PLAINTIFF/RESPONDENT

VERSUS

MOKUA OTWORI

alias RICHARD MONARI MEROKA DEFENDANT/APPLICANT

RULING:

The applicant's application is under order 9B rule 8 CPR and s. 3 and 3A CPA. Mr. Mokuia who argued the application stated that the applicant had filed another application dated 7th October 2005. the same was set down for hearing on 16th November 2005. On that day, Mr. Mokuia said he was engaged before Nairobi High Court. He deputized a Mr. Gekonge Advocate to hold his brief. The matter however was not in the cause list. Mr. Gekonge left and Mr. Mokuia's client and clerk were left looking for the file. It was found at noon and taken to court. By then Mr. Gekonge had not returned and Mr. Mogire held Mr. Mokuia's brief and asked for adjournment. It was rejected and application was later dismissed. He pleaded with the court to set the dismissal order aside and reinstate the dismissed application.

Mrs. Asati opposed the application.

I have considered the application with due respect. It does not make any sense at all the way it is drafted. It seeks the following orders:

- (i) That the matter herein be certified urgent and same be heard exparte in the first instance due to its nature.
- (ii) That the Honourable court be pleased to set aside its dismissal orders dated the 16th of November 2005 and reinstate the same for hearing inter-parties and decided on merit.
- (iii) That the costs be in the cause.

The main prayer is No.(ii) which in its present form does not make any sense. The court is being asked "to set aside its dismissed orders dated 16th November 2005."

With respect there are no "dismissed orders" which were made on 16th November 2005. On that day the court only dismissed the applicants application. I don't know if he therefore meant dismissal orders and not dismissal but the court cannot write a litigant's prayer.

Further the court after setting aside the said “dismissed orders” is being asked to reinstate the same for hearing inter parties. Even if we assume the applicant meant “dismissal orders” there is no way the court can reinstate the same orders and have them heard inter parties. Dismissal can’t be heard in anyway. The prayers therefore are not capable of being granted in their present form. I know Mr. Mokuia submitted about reinstating an earlier application but his submissions do not go hand in hand with his prayers. Parties are bound by their pleadings and prayers.

The court cannot grant prayers not sought. The application does not pray to the court to reinstate the dismissed application for hearing.

For the above reason I find application has no merit and dismiss it.

Dated 25th May 2006

KABURU BAUNI

JUDGE

Cc – Mobisa

N/a for Applicant – aware of date

Respondent present