

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

Civil Case 289 of 1996

PLAYFAIR ENTERPRISES LTD.....
PLAINTIFF

VERSUS

PRINCELY HOUSE LTD.....
.....DEFENDANT

RULING

The Ruling is delivered in the application dated 17th June 2003 in which the applicant seeks the setting aside of an order made on 13th June, 2003 dismissing the applicants' Chamber Summons of 26th March 2002 for non attendance. The applicant prays that once the dismissal order is set aside the said chamber summons of 26th march 2002 be reinstated and heard inter partes. The reasons given for not attending court on the due date are that Counsel, although aware of the hearing date was under the misapprehension that the same would be heard in the afternoon as is the practice in the courts.

In the Affidavit filed in support of the application before me counsel swears in paragraph 4 that in view of his belief that applications are heard in the afternoon, he assumed that his clients case would be heard in the afternoon and fixed another matter for hearing, Tribunal Case No. 51 of 2001 at the Co-operatives Tribunal.

The Application opposed by the Respondents who obviously do not wish to have this matter consolidated with H.C.C.C No. 1009 of 2001 as is sought by the Applicants in the Chamber Summons of 26th March 2002. The Respondents have submitted both in writing and orally that the non-attendance by Counsel on the 13th June 2003 is not excusable for reasons that the application sought to be reinstated had previously been dismissed again for non attendance by Counsel on 22nd may 2003 but counsel for the Respondent consented to the dismissal order being vacated consequently to which the application reinstated for hearing on 13th June 2003. The record bears counsel for the Respondent out by showing clearly that on 22nd May 2003 both parties appeared before the Hon. Mr. Justice Hayanga (as he then was) and were allocated a hearing at 3.30 p.m. Counsel for the applicant failed to turn up and the application was dismissed.

By consent of Counsel the dismissal order was lifted later on the same day and the same fixed for 13th June 2003. The court did not say the same was to be listed for the afternoon. The cause list exhibited by Counsel for the Applicant clearly shows that the 13th of June 2003 was a Friday and that the matter was listed at 9.00 a.m. whereas it is true that most courts in the Civil division of the High Court at Nairobi hear applications in the morning, there are no Chamber Summons listings on Friday afternoon, unless the same has been recorded by the Judge before whom a date is taken. The correct assumption for counsel in the circumstances should therefore have been that the matter would be heard in the morning and therefore check the list and confirm the position before going elsewhere. I consider this to be a matter where diligence was necessary but was not exercised. I have studied the application sought to be reinstated and

do not consider it to be of a nature where prejudice can be presumed to follow my failure to exercise my discretion as is sought herein.

Not being satisfied of the reasons given for non attendance on 13th June 2003, I decline to allow the application and dismiss the same with costs to the Respondents.

Dated and Delivered at Nairobi this 7th day of July 2006

M.G. MUGO

JUDGE

In the presence of

Njoroge Mwate holding brief for Applicant for S. Gitau

Isindu for Respondent