

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

Misc Civ Appli 112 of 2004

**FAR EAST CAR BANK LTD.....APPLICANT
VERSES
JULIUS MAINA NDERITU.....RESPONDENT**

RULING

This is an application by M/s far east car bank Ltd, the applicant seeking the following two reliefs of the application dated 20th April 2005,

- (1) That this court be pleased to set aside or vary its orders dated 7/10/2004 and
- (2) That this court be pleased to re-instate the application dated 21/5/2004.

The application is indicated to be brought under section 3A of Civil Procedure Act, and order 1xB rule 8 of the civil procedure Rules and is supported by some grounds on the body of the summons and an affidavit of Mohamed Afzal ,the Director of the applicant .Julius Maina Nderitu, the respondent opposes the application relying on the his own replying affidavit.

On 21st may 2004, the applicant filed an application in this court seeking an order for transfer to Eldoret Chief Magistrate's Court No. 112 of 2004 between it and the respondent to Kisumu Chief Magistrate's court for hearing and final determination on the ground that the dispute the subject of the suit arose in Kisumu and all the witnesses the applicant intends to call are resident in Kisumu but the respondent had gone to Eldoret and obtained orders which were being improperly used for a seizure of motor vehicle registration no.KAN 290Z.It was contended that ex-parte orders of stay of proceeding in Eldoret Chief Magistrate's Court No. 112 of 2004 pending the inter-party hearing were granted but on 7th October 2004,the application dated 21st May 2004 was dismissed for want of prosecution. On 20th May 2005, the present application was filed seeking astray of proceedings in Eldoret Chief Magistrate Court no.112 of 2004, pending the interparty hearing of application .

As indicated above, the applicant seeks an to side aside order dismissing the application dated 21st May 2004 which were made on 7th October 2004 for want of prosecution There are no reasons given why the applicant counsel was absent on that date.There is also no explanation for the long delay from 7th October2004 to 20th April2005,before this application was brought, I find that this application was without merit and the same is dismissed with costs.

Dated and delivered at Kisumu this 29th day of July,2005.

B.K.TANUI

JUDGE

In the presence of ,

Mr P.J. Otieno for Momanyi for responded

N/A for applicant.

B.K. TANUI

JUDGE