

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISC. CIVIL APPL. NO. 1345 OF 2003

ESTHER WAHOME BUREAU LIMITED..... APPLICANT

VERSUS

MFI OFFICE SOLUTIONS LIMITEDRESPONDENT

R U L I N G

1. The Preliminary Objection raised by Learned Counsel for the Respondent is this; that the words “if any party served does not appear at the time and place above -mentioned such order will be made and proceedings taken as the court may think just and expedient” are missing in the Application dated 2nd November 2003.
2. I am told that Order 50 Rule 15(2) specifically uses the word “shall” and therefore without the words above, the whole Application should be struck out.
3. In response, counsel for the Applicant tells me that those words merely go to form and not to the substance of the Application and Order 6 Rule 12 cures such defects as they are merely technical.
4. It is becoming increasingly clear that the use of Preliminary Objections is intended to serve a purpose other than known and expected in law. Time and time again, courts have said that Preliminary Objections must be predicated upon a matter of law that would cripple a proceeding because it goes to substance.
5. As I see it, the purpose for which the words used in Order 50 Rule 15(2) are put there to warn a party of the consequences of non-attendance and not the substance of any claim it may have against another party or is defending as filed against him. In the instant case the party warned has appeared and cannot now claim that those words should be applied to it.
6. I do not see merit in the objection and even if there was, it can be soothed with the inherent power of this court to admit a pleading even with some defect in form.
7. I disallow the same and ask that parties take a hearing date for the Application dated 2nd November 2003.

Dated and delivered at Nairobi this 18th day of February 2004.

I. LENAOLA

Ag. JUDGE

18.2.2004

Before Lenaola Ag. J.

Amos CC

Ruling read in the presence of Mr. Kamau for Miss Njoroge for the
Respondent

No appearance for the Applicant.