

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
MISCELLANEOUS 11 OF 2001

JUMA OMAR KEAH.....APPLICANT

- Versus -

PERMANENT SECRETARY OFFICE OF THE PRESIDENT...RESPONDENT

R U L I N G

This is an application by way of Notice of Motion. It is dated 28th May 2001. It is brought under Order 53 Rule 3 of the Civil Procedure Rules. Although it says it is based on the statement filed on 24th January 2001 together with Affidavit of Mohamed Faki Khatib dated 24th January 2001, the same statement and Affidavit were not annexed to the Application itself. I have perused the two Affidavits of service in the file. The first one is sworn on 4th September 2001. All it says at paragraph 2 is that a copy of Notice of Motion dated 28th May 2001 was served upon the Attorney General on 4th June 2001 and was accepted and copy stamped. That stamped copy is not in the file and there is no evidence that Order 53 rule 4(1) was complied with by the Applicant. That rule states as follows:

“4(1) copies of the statement accompanying the Application for leave shall be served with the notice of motion, and copies of any Affidavits accompanying the application for leave shall be supplied on demand

The second Affidavit is on service of hearing Notice. No copy of the stamped hearing notice was filed but that is not important for my decision. Further the Notice of Motion did not on its own contain any supporting Affidavit so that as the Notice of Motion was not served with copies of statement filed for leave, the Notice of Motion remained hanging, completely unsupported in any way.

As the Respondent did not attend before me for hearing, I will not dismiss or strike out this Notice of Motion. I will stay it till the Applicant complies with order 53 rule 4(1) strictly. No order as to costs. Dated at Mombasa this 7th day of March, 2002.

J.W. Onyango Otieno

JUDGE