

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL CASE NO. 179 OF 2002

PRIDELINE EXPRESS LTD.....PLAINTIFF

-VERSUS

IMPERIAL BANK LTD.....DEFENDANT

R U L I N G

An application by Plaintiff dated 2/5/02 came up for further hearing on 23/7/02 It could not be reached at the close of the day but the court, at the request of the advocates for the applicant and Respondent, respectively agreed to hear them the next morning at 8.30 a.m

When the court opened on 24/07/02, the advocate for the Defendant/Respondent was ready and waiting outside the Judge's Chambers at 8.30 a.m. but the advocate for the Plaintiff/Applicant was not there. When the file was called a few minutes later, the same advocate was not present. The file was put aside and the court proceeded to deal with other matters. At about 9.45 Mr. Obura drew the Court's attention and told the court that he was ready but the advocate Mr. Gichana, for the applicant was not present.

This was so noted on the court file. It is then that the Respondent's advocate told the court that it was the Applicant's application and asked the court to discharge the interim orders which had been extended several times before at the request of the plaintiff/applicant. The subject matter involve some vehicles purchased on a loan from the bank. There is a default in repayment and by the time the case is resolved, the value of the vehicles would certainly have come down considerably and the bank would stand to lose. I therefore discharged the restraint orders and proceeded to hear other matters on the cause list. Some time later and while the court was in session, the advocate for the applicant walked in and presented himself for the hearing of his application. I declined to hear him and said the court had already issued orders.

He has now filed an application under certificate of urgency seeking reinstatement of the orders on the grounds that he was absent "by a brink of an eye" and that there is no inordinate delay in making this application. He has sworn an affidavit in support of his application. The affidavit states that he had gone to court No.13 to mention a traffic matter with a view of fixing a hearing date in Traffic case No. 5347 of 2002. I shall not challenge him on that. All I can say is that he ought to bear in mind his priorities. The least this Court should have expected him to do was to request one of the advocates in court, and there were several of them seated there for over 3 hours, to hold his brief and inform the court of his whereabouts. Instead he saw it convenient or appropriate to proceed to attend to some mention of a traffic matter in court No. 13, without asking a colleague to notify the court.

This application dated 24/7/02 is dismissed. The case is now stood over generally and a hearing date should be taken in the registry.

Orders accordingly.

Dated and Delivered this 26th Day of July, 2002.

L.P. OUNA

J U D G E

Read in the presence of Plaintiff's/Applicant's Advocate.

L.P. OUNA

J U D G E