



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS
CIVIL MISCELLANEOUS APPLICATION NO. 116 OF 1999

FREDRICK M. MULINGE* ::: *APPELLANT
MULANDI KYONDO* ::: *RESPONDENT

Coram: J. W. Mwera J.
Kituku Advocate for applicant
Mbiti Advocate for Respondent
C.C. Muli

RULING

The applicant under O9B r. 8, Civil Procedure Rules and S. 3A Civil

Procedure Act desires this court to set aside its orders of 28.7.99 by which the applicant's application dated 12.7.99 was dismissed because this very applicant had not appeared on the said 28.7.99 to prosecute that application. It is desired that that application of 12.7.99 be reinstated and heard inter partes. Mr. Kituku argued further that temporary stay orders that had been in place be reinstated and extended because the Respondent was executing for costs which the lower court had not assessed but instead taxed.

The court heard that the applicant's lawyer Mr. Mwinzi was travelling from Nairobi to Machakos on 28.7.99 by public means to prosecute the application dated 12.7.99. The motor vehicle he was in broke down near Athi River and that by the time he arrived at the courthouse the orders complained of had already been made. That for that reason may the orders prayed be given. Mr. Mbiti was of the view that infact Mr. Mwinzi was already late when he left Nairobi by public means at 8 a.m. to Machakos on 28.7.99. He could hardly make it to begin the court session of the day at 9.15 a.m.

Having heard both sides the orders prayed are granted. Sufficient reason is shown why Mr. Mwinzi could not arrive in court on time to prosecute the application dated 12.7.99. The motor vehicle he was travelling in suffered mechanical breakdown on the way. Whether he took a risk to leave Nairobi at 8 a.m. or whether this court believes his reason is neither here nor there.

Orders as prayed but costs to the Respondent.

Delivered on 20th June 2001.

J. W. MWERA

JUDGE