



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT CIVIL APPEAL NO.14 OF 2017

PATRICK MIANO KABUGI.....APPELLANT

VERSUS

BIASHARA SAVINGS AND CREDIT

CO-OPERATIVE SOCIETY LTD.....RESPONDENT

R U L I N G

The application before me is dated 27th February 2018 and filed on the same date. It is brought under certificate of urgency by A.J. Kariuki Advocate for the applicant. It was provoked by orders issued on 27th February 2018 when the applicant's application dated 29th January 2018 was dismissed for non-appearance of both the applicant and his counsel.

It seeks orders: -

- 1) That the application be certified as urgent and heard ex-parte in the first instance.
- 2) That the interim orders be reinstated.
- 3) That the order of 27th February 2018 be revoked/set aside and the application of 29th January 2018 set down for hearing and determination on its own merits.
- 4) That pending the hearing and determination of the application, the order of stay be extended accordingly.
- 5) That the costs be provided for.

All I need to determine for now is whether the application is urgent, and whether I should allow prayer (2) and (4).

The application is brought under Order 12 rule 7 of the Civil Procedure Rules 2010. It is supported by the affidavit of the applicant Patrick Miano Kabugi sworn on the 27th February 2018. The main grounds for the application are that;

1. It is really fair and just that the application of 29th January 2018 be heard on its merit.
2. The Applicant was prevented from attending court by illness.
3. The applicant's counsel resides 27km away from Nyeri Town.

In his affidavit, the applicant depones that when he was about to leave home he suffered a diabetic attack and had to visit his doctor for treatment. He arrived in court around 9.20am, and when he met his counsel he told him he had been held up for some reason, and had reached the court room about 10.00am and found that the matter had been dismissed.

On the face of it the applicant has a good reason for having come late to warrant his failure to be present when the matter was called up.

I therefor certify the matter as urgent.

I allow prayers (2) and (4).

I order that the application be served immediately. The respondent to respond within 7 days of service, and the application be fixed for hearing in the registry at the earliest date available.

Dated, Delivered and signed this 1st March, 2018 at Nyeri.

MUMBUA T. MATHEKA

JUDGE