



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

ELC. NO. 62 OF 2014 (FORMERLY HCC. NO. 9 OF 2011)

JOHN PETER OTHIENO.....PLAINTIFF/RESPONDENT

=VERSUS=

ANNE OLAWO KIMARU.....DEFENDANT/APPLICANT.

R U L I N G.

ANNE OLAWO KIMARU, hereinafter referred to as the Applicant, filed the Notice of Motion under certificate of urgency dated 30th January, 2015 seeking to have the orders of 28th January, 2015 that dismissed her application dated 16th January, 2015 set aside and the application reinstated for hearing.

The application is opposed by John Othieno, hereinafter referred to as the Respondent, through the replying affidavit sworn by Gabriel Fwaya on 2nd February, 2015.

I have carefully considered the supporting and replying affidavits and submission by Applicant and Respondent's counsel and find as follows:-

1. That contrary to the claim by the Applicant that she was in court on 28th January, 2015 and did not hear her file being called out, the truth of the matter is that the Applicant was not present when her matter was called out. She only walked into the court room at the tail end of the day's session and by then the Respondent's counsel had left the courtroom.
2. That the Applicant has not offered any explanation as to why she was not in court when her matter was called out or why she arrived late. She has also not explained what steps she took to have the matter mentioned before the Deputy Registrar upon finding that the dismissal order had been issued.
3. That notwithstanding the foregoing, the court finds that the Applicant acted without delay on finding her application dated 16th January, 2015 had been dismissed by filing this application within two days.
4. That for reasons in (3) above, the application dated 30th January, 2015 is allowed in the following terms:
 - a. That the orders of 28th January, 2015 are hereby set aside.
 - b. That the application dated 16th January, 2015 is hereby reinstated and a date for its hearing be fixed on a priority basis.
 - c. That as this application was occasioned by the lateness of the Applicant in coming to court on 28th January, 2015, she will meet the Respondent's costs of this application.

It is so ordered.

S.M. KIBUNJA,

JUDGE.

DATED AND DELIVERED ON 11th .DAY OF MARCH, 2015.

IN THE PRESENCE OF ;.....N/A.....PLAINTIFF/RESPONDENT

.....N/A.....DEFENDANT/APPLICANT

.....N/A.....ADVOCATE.

JUDGE.