

REPUBLIC OF KENYA

High Court at Machakos

Civil Case 460 of 1998

JOYCE MUKULU KILONZO PLAINTIFF

VERSUS

BERNARD KILONZO KATIKU DEFENDANT

RULING

A replying affidavit herein was filed outside the time given by the court by counsel for the defendant Nzei & Company Advocates. It was filed on 5th July 2012. A day before then, a Summons for Directions had been filed by M/s Andrew Makundi & Company Advocates on 4th July 2012. Andrew Makundi & Company Advocates were entitled to file the application for directions if the replying affidavit filed by M/s Nzei & Company Advocates was not filed within the time allowed by the court. Mr Makundi, learned counsel has argued that the replying affidavit filed on 5th July 2012, is not properly on record and should be ignored. Mrs Nzei states that the court can allow the affidavit to stand on record.

This court cannot ignore pleadings and affidavits filed before hearing. Under Article 159 (2) (d) of the Constitution, the court is required to administer justice without undue regard to technicalities. I will allow the affidavit to stand on record. However, that means that the effort of Mr Makundi to file an application for directions has been a waste. A fresh application for directions has to be filed. I will therefore allow the affidavit filed on 5/7/12 to be property on record, but the defendant will pay throw away costs of the application for directions.

I order as follows:-

- 1. The affidavit filed by M/s Nzei & Company Advocates on 5th July 2012 is deemed as properly on record.**
- 2. The defendant will pay the plaintiff throw away costs of the application for directions filed by M/s Andrew Makundi & Company Advocates on 4th July 2012, which costs I assess at Kshs.3,000/=. Same to be paid within ten (10) days from today.**

Dated and delivered this 5th day of **October** 2012.

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George Dulu
Judge

In the presence of:
Nyalo – Court clerk

Ms Ngatia holding brief for Mrs Nzei for Plaintiff

Mr Kimeu holding brief for Mr Makundi for Defendant