

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO 772 OF 1984

AURORA BAKING COMPANY (1975) LTD.....PLAINTIFF/APPLICANT

AND

PHENNTHA WANINGI AND 3 OTHERS.....DEFENDANTS/RESPONDENTS

RULING

By an order of this court dated 19.11.84 the hearing of the plaintiff's/applicant's application filed in this court on 13.11.84 was stood over to 8.1.85 before the Duty Judge and the caveat lodged in respect of L R No.10445/3 situated in Nyandarua District was extended pending the disposal of the aforesaid application. On 8.1.85 the aforementioned application was struck out by this court for the non appearance of the parties after the same was called out for the second time at 12.30 p.m. The above mentioned application was then before the Duty Judge as per the Order of this court dated 19.11.84.

The plaintiff/applicant has now applied to this court to set aside the order this court dated 8.1.85 and to reinstate this court's earlier order dated 19.11.84. The present plaintiff/applicant's application is supported by the affidavit of its counsel annexed thereto. According to paragraph 7 of the said affidavit, at about 8.45 a.m. on 8.1.85 the counsel for the plaintiff/applicant appeared before the Deputy Registrar of this court and was informed that there was no Judge available and that a new date was to be set down and both parties would be advised accordingly. It is not understandable why the counsel for the plaintiff/applicant should have gone to the Deputy Registrar of this court in regard to the plaintiff/applicant's application filed in this court on 13.11.84 when by the order of this court dated 19.11.84 the said application was coming up for hearing before the Duty Judge on 8.1.85. At one stage in his address to this court, the counsel for the plaintiff/applicant said that on the date in question he appears to be untruthful because it was Trainor, J. who ordered the plaintiff/applicant's application filed in this court on 13.11.84 to be struck out on 8.1.85 for the non appearance of the parties called out for a second time at 12.30 p.m.

There are no other reasons shown by the plaintiff/applicant why there was no appearance on its behalf on 8.1.85 to prosecute its application filed in this court on 13.11.84. In these circumstances therefore, I can find no just cause why the order of this court dated 8.1.85 should be set aside. Consequently, the plaintiff's/applicant's application filed in this court on 5.7.85 is dismissed with costs to the respondents who appeared through their counsel although the aforesaid application was initially intended to be heard ex-parte.

Order accordingly.

Dated at Nairobi this 15th day of July, 1985.

J E GICHERU

JUDGE