



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT ELDORET**

**E & L CASE NO. 376 OF 2014**

**ROSE CHEPKOECH ROTICH.....PLAINTIFF**

**VERSUS**

**ELIAS KIPLAGAT BUSIENEL.....DEFENDANT**

**RULING**

**Rose Chepkoech Rotich** prays for orders that the order dismissing application dated 22.5.2018 be reviewed and set aside and that the order of 23.7.2018 be set aside. The application dated 22.5.2018 be reinstated and be set down for hearing and determination on merit.

The application is based on grounds that the plaintiff/applicant filed application on 22<sup>nd</sup> May, 2018 seeking for temporary orders of stay of execution of the decree herein pending the hearing of the said application and eventually the intended lodged appeal. That the plaintiff's/applicant's application dated 22<sup>nd</sup> May, 2018 was fixed for interparties hearing on 23<sup>rd</sup> July, 2018.

That the said application was dismissed 23<sup>rd</sup> July, 2018 for the reason that the plaintiff's/applicant's advocate arrived in court when the matter had already been called and/or dismissed for want of prosecution and/or non-attendance.

That the plaintiff's/applicant's advocate late arrival in court should not be visited upon the plaintiff/applicant.

That the application be allowed in the interest of justice and fairness.

That if the dismissal orders of 23<sup>rd</sup> July, 2018 are not reviewed and/or set aside, the plaintiff/applicant will greatly suffer prejudice. The applicant states that his advocate did not reach court in time due to heavy traffic jam.

The respondent filed grounds of opposition that the applicant is guilty of laches having brought the application for reinstatement after inordinate delay. That the applicant has not demonstrated any reasons sufficient to warrant grant of the orders of reinstatement and/or review sought.

That the said application is vexatious, frivolous, devoid of any merit and amounts to an abuse of the due process of this Honourable court hence the same ought to be dismissed forthwith with costs. That the application does not meet threshold to be reinstated by the oxygen principle or Article 159 of the Constitution of Kenya, 2010.

I do find that the allegation that the applicant's counsel was held in traffic jam and therefore, could not attend court as scheduled is not controverted.

I do grant the applicant prayers that the orders herein dismissing the plaintiff's application dated 22<sup>nd</sup> May, 2018 herein be reviewed and/or set aside.

The plaintiff's application dated 22<sup>nd</sup> May, 2018 be and is hereby reinstated and it be set down for hearing and determination on merit. Costs in the cause.

**Dated and delivered at Eldoret this 31<sup>st</sup> day of May, 2019.**

**A. OMBWAYO**

**JUDGE**