



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT**

**AT MOMBASA**

**CIVIL APPEAL NO. 246 OF 2011**

**JAMES KALUKO KYALO.....PLAINITFF**

**VERSUS**

**JULIUS MWANGANGI MULU.....DEFENDANT**

**RULING**

***(Application to reinstate a dismissed application; orders declined)***

1. The application before me is that dated 21 June 2019. It is brought pursuant to the provisions of Sections 1A, 1B, 3A of the Civil Procedure Act, and Order 51 of the Civil Procedure Rules. It seeks orders to have reinstated an application for review of a bill of costs which was dismissed for non- attendance. The application is supported by the affidavit of Jane Akinyi Onyango, who works with the law firm of M/s Omollo Onyango & Company Advocates who are on record for the applicant. She has deposed inter alia as follows at paragraph 3 :-

*That I was holding brief for Ms. Angeline Omollo was mistaken and actually thought the suit coming up was Judicial Review Application No. 4 of 2019 between James Kaluko Kyallo vs Julius Mwangangi Muli and & Others which was before Justice Ogolla only to realize that the matter was actually listed before Justice Anne Omollo for the application for review.*

2. She has averred that her non-attendance was thus not deliberate.

3. The application is opposed by the replying affidavit of Augustus Khisa Wafula, counsel on record for the respondent. He has pointed out that the application mentioned, that is Judicial Review No. 4 of 2019, was coming up on 5 March 2019 whereas this matter was in court on 13 June 2019. He has further deposed that the Judicial Review (JR) application was dismissed on 9 April 2019 and as such the JR application could not have been before Ogolla J on 13 June 2019 when the application sought to be reinstated was dismissed.

4. I have considered the matter. The applicant seeks the discretion of this court to reinstate an application that was dismissed for non-attendance. I have considered the reasons given and I am not persuaded by them. I would probably have been moved if counsel had displayed a cause list showing that there was JR No. 4 of 2019 coming up on the same date between the same parties. None has been shown. Indeed it has not been disputed that JR No. 4 of 2019 was dismissed on 9 April 2019 and could not thus come have up on 13 June 2019.

5. I would probably have been moved to exercise my discretion and reinstate, despite not finding any merit in the reasons given, if I thought that there was something very substantial that would cause great prejudice to the parties. My view, on perusal of the matter, is that there is nothing that would move me to exercise my discretion. The application that was dismissed simply sought a review of the monthly instalments that the applicant was directed to pay to offset a taxed bill of costs. The bill was of Kshs. 622,866.21/=. The applicant wanted to pay by monthly instalments of Kshs. 5,000/=. The court declined and directed the amount be liquidated by at least 10 equal monthly instalments. If the court had allowed the payment of Kshs. 5,000/= per month, liquidating the amount would take about 10 years. To me that is extremely unreasonable. The court in its discretion thought that payment in 10 instalments is what is reasonable. I do not see why I should reinstate an application simply to argue the instalments to be paid every month given the prevailing circumstances.

6. For the above reasons, the application is dismissed with costs.

7. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 30TH DAY OF OCTOBER 2019.**

.....

**MUNYAO SILA**

**JUDGE.**

**IN THE PRESENCE OF:**

Ms. Obobo holding brief for Ms Omolo for the applicant.

Mr Wafula for the respondent.

Court assistant; David Koitamet