

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

HIGH COURT CIVIL APPEAL NO.55 OF 2010

(formerly Mombasa Tribunal Land Appeal No. 165 of 2001)

SAMUEL KALAMA NZARO.....PLAINTIFF

=VERSUS=

KALAMA NZARO MAJALIWA.....DEFENDANT

R U L I N G

1. What is before me is the Appellant's Application dated 17th December 2013 filed pursuant to the provisions of Order 12 Rule 7 of the Civil Procedure Rules. The Application is seeking for the following orders:

- a) **That the dismissal order made on 9th December 2013 dismissing the appeal for non-attendance be set aside.**
- b) **That the stay orders issued by the Honourable Court on the 26th October 2011 be reinstated.**
- c) **That the appeal be reinstated for further proceedings.**
- d) **That costs to be in the cause.**

2. The Application is premised on the grounds that the Appeal was dismissed for non-attendance on 9th December, 2013 when it was listed for hearing; that counsel for the Appellant did not attend court on 9th December, 2013 for good cause and that it is in the interest of justice that the appeal be reinstated.

3. According to the deposition of the Appellant's advocate, she fell ill on 6th December, 2013 and was put on bed rest hence was unable to travel to Malindi for hearing on 9th December 2013.

4. Although the Appellant's counsel informed his colleague to hold his brief, she misdirected him that the matter was listed before Meoli J which was not the position. By the time her colleague found out that the matter was listed before this court, the same had been dismissed for non-attendance.

5. The Respondent did not file a Replying Affidavit although he was served with the Application.

6. I have perused the medical notes annexed on the Supporting Affidavit. The said notes show that indeed the Appellant's counsel was indisposed on 9th December 2013 and could therefore not attend court.

7. In the circumstances, I find that the Appellant's advocate has shown a good cause why she was unable to attend court on 9th December, 2013. I shall, which I hereby do, allow the Appellant's Application dated 17th December 2013 as prayed with no order as to costs.

Dated and delivered in Malindi this **9th** day of **May**, 2014.

O. A. Angote

JUDGE