

- same be listed for hearing before the court which gave/issued the orders.*
- b. *THAT the cost of this Application be in the cause*
2. The Application is predicated on the following grounds.
- (a) *The Plaintiffs' counsel attended court but arrived late when the matter had already been called and placed aside.*
- (b) *On perusing the court file, the Plaintiffs' counsel was surprised to note that it is the interested party's counsel who moved the court to dismiss the Application.*
- (c) *The Interested Party's counsel wrote a letter dated 5th June 2013 informing the Honourable Court that the counsel handling the matter was unwell and therefore could not attend court, which letter was copied to the Plaintiffs' counsels.*
- (d) *The Interested Party's counsel was served with a Hearing Notice on the 22nd May 2013 which he received under protest saying that the date was not convenient to them as their diary was full and the date was not convenient to them as their diary was full and the date was taken ex parte.*
- (e) *The interested party attended court on the 6th May 2013 and moved the court to dismiss the matter for non-attendance.*
- (f) *The action by the Interested Party's Counsel to move the court without waiting or placing the file aside is an ambush, bad practice, when knowing the Plaintiffs/Applicants' counsel was coming from Mombasa and where had no control of the traffic hence arrived late.*
- (g) *The Interested Party's Counsel should have taken precedence when the Plaintiffs/Applicants' counsel consented on the same matter to have his application reinstated after being dismissed by court on the same case file.*
- (h) *In the circumstances of this case, it is only fair and just that the orders sought herein be granted.*
3. The Application is supported by the Affidavit of the Plaintiffs' advocate which is a reinstatement of the grounds that I have reproduced above.
4. The Defendant did not file any response to the Application.
5. The Application is seeking to reinstate the Application dated 26th April 2013 which I dismissed for non-attendance. The Application dated 26th April 2013 was seeking for leave to amend the Originating Summons to include Patrick Kobozi Muzungu as a co-Plaintiff.
6. Having read the Plaintiffs' advocate's affidavit, I am satisfied that the reasons he has given for his inability to attend court on 6th May 2013 are satisfactory.
7. I shall, which I hereby do, invoke my unfettered inherent jurisdiction to reinstate the Plaintiffs' Application dated 26th April 2013 so that it can be heard on merit.
8. I therefore allow the Plaintiffs' Application dated 2nd July 2013 as prayed.

Dated and Delivered in Malindi this 29th day of AUGUST, 2013

O. A. Angote

Judge