



**IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: O'KUBASU, J.A (IN CHAMBERS))
CIVIL APPLICATION NO. NAL.329 OF 2000 (UR.162/2000)**

BETWEEN

HARIT SHETH T/A HARIT SHETH ADVOCATE APPLICANT

AND

K.H.OSMOND T/A K.H. OSMOND ADVOCATE RESPONDENT

(An application for extension of time to file Notice of Appeal and Record of Appeal in an intended appeal from the ruling and order of the High Court of Kenya at Nairobi (Justice Moiyo Ole Keiwua) dated 16th October, 1996

in

H.C.C.C.No.311 of 1998(O.S)

RULING

This is an application by way of Notice of Motion brought under Rule 55(3) of the Court of Appeal Rules in which the applicant is seeking the following orders:-

"1.That Civil Application No.329 of 2000 be restored for hearing.

2.THAT costs of this application be dealt with as the justice of the case shall sum to require.

This application is brought on the following grounds:-

"1.THAT the non-attendance on 20th March 2001 before the Honourable Justice O'Kubasu was not intentional and is explainable.

2.THAT there is sufficient cause for the Applicant's Advocates lateness and/or failure to appear before Justice O'Kubasu, the matter having previously been listed before the Honourable Justice Bosire on the said 20th March, 2001.

3.THAT the above changes and confusion caused by the Applicant's Advocates Court clerk when he perused the Cause List on 19th March 2001 and informed the Advocate appearing that the matter was listed as a three judge matter is excusable, the Court of Appeal's Cause List not being

available otherwise than on the notice board and also the said cause list being on the notice board as of cause more than twenty four (24) hours before any date."

When the matter came up for hearing before me Mr.Nagpal for the applicant pointed out that having regard to the two supporting affidavits they have shown sufficient cause for non-appearance as required by Rule 55(3) of the Court of Appeal Rules which provides:-

"Where an application has been dismissed under subrule(1) or allowed under sub-rule (2), the party in whose absence the application was determined may apply to the court to restore the application for hearing or to re-hear it as the case may be, if he can show that he was prevented by any sufficient cause from appearing when the application was called on for hearing."

Hence, in an application of this nature an applicant has to show that there was sufficient reason or cause which prevented him from appearing at the hearing of his application. It has now been explained that there was confusion which misled Mr. Ngunjiri leading to his nonappearance before me on 20th March 2001. When this mistake was discovered this application to restore the earlier application was immediately filed on 21st March, 2001.

In view of the foregoing I am satisfied that sufficient cause has been shown as envisaged by Rule 55(3) of this Court's Rule and therefore this application is granted. The earlier application which was dismissed on 20th March, 2001 is now restored. There will be no order as to costs.

Dated and delivered at Nairobi this 25th day of May, 2001

E.O. O'KUBASU

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JUDGE OF APPEAL