

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CIVIL CASE NO.75 OF 2006

SAMUEL WANDERA.....1ST PLAINTIFF

MOSES JUMA MAJONDA.....2ND PLAINTIFF

VERSUS

MASTERMIND TOBACCO (K) LIMITED.....DEFENDANT

RULING

Before Court is the Notice of Motion dated **31st October 2019** seeking the following Orders:-

“1. SPENT

2. THAT the Honourable Court be pleased to set aside its orders of 17th October 2019 dismissing the Defendant’s application dated 9th July 2019 for non-attendance.

3. THAT the Honourable court be pleased to order reinstatement of the Defendant’s application dated 9th July 2019 for hearing and determination.

4. THAT costs of this application be provided for.

The Plaintiffs opposed the application. The application was canvassed orally in open Court on **5th February 2020**.

I have considered the arguments before me and I find merit in this present application. I have put into consideration the explanation given for failure of Counsel to be in Court on **17th October 2019** when their application was set for hearing. Counsel has explained that they mis-diarised the hearing date. This is a fault or error on the part of the Advocate. The Defendant (Client) ought not be punished for mistakes of his lawyer. For this reason I allow the Notice of Motion dated **31st October 2019**, in terms of prayers (2) & (3) thereof.

Costs to be met by the Defendant.

Dated in Nairobi this 25th day of February 2020.

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Justice

Maureen

A.

Odero