



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT**  
**AT NAIROBI**  
**MILIMANI LAW COURTS**  
**Civil Suit 608 of 2007**

**GODFREY MWIRIGI MBUTURA ..... 1<sup>ST</sup> PLAINTIFF/APPLICANT**

**MARY NJERI MBURU ..... 2<sup>ND</sup> PLAINTIFF/APPLICANT**

**MERCY N. KANYARA ..... 3<sup>RD</sup> PLAINTIFF/APPLICANT**

**VERSUS**

**SASANET LIMITED ..... 1<sup>ST</sup> DEFENDANT/RESPONDENT**

**SASANET INVESTMENTS**

**CO-OPERATIVE SOCIETY LTD ..... 2<sup>ND</sup> DEFENDANT/RESPONDENT**

**AND**

**BANK OF INDIA ..... 1<sup>ST</sup> GARNISHEE**

**DUBAI BANK (K) LIMITED ..... 2<sup>ND</sup> GARNISHEE**

**RULING**

On 19<sup>th</sup> March, 2008 the defendants filed an application seeking, *inter alia*, to set aside the ex parte judgment entered against them in this matter. In a ruling delivered on 25<sup>th</sup> August, 2010 the court set aside the ex parte judgment and directed that a defence be filed within 15 days from the date of the said ruling. The ruling was delivered by Koome, J. (as she then was), on behalf of Mwilu, J. who had been transferred to another station.

On 2<sup>nd</sup> May, 2012 the plaintiffs filed an application seeking reinstatement of the ex parte judgment

on the ground that the defendants had failed to file any defence. The defendants, through their advocate, **Mrs. Gatu Magana**, filed a replying affidavit and stated that when they argued their application before Mwilu, J. the judge set the date for delivery of her ruling as 3<sup>rd</sup> June, 2008. On that day Mrs. Magana travelled from Nakuru where she practices to Nairobi but the ruling was not delivered. She did not receive any notice thereafter of delivery of the ruling and was not aware that the ruling had been delivered until she was served with the plaintiffs' application. She further stated that the defendants are desirous and keen on defending this suit as they contend that they do not owe any money at all to the plaintiffs. The defendants filed a statement of defence together with their replying affidavit.

Although **Ms. Oluoch** for the plaintiffs told the court that notice of delivery of the ruling was served upon all the parties, she did not adduce any evidence in support of that contention. I perused the court file and there is no indication that any notice of delivery of the ruling was served upon the defendants' advocates. The record shows that the ruling was delivered in the absence of the defendants' counsel.

In the circumstances, the defendants cannot be faulted for having failed to file their statement of defence within the stipulated period of time. Consequently, I dismiss the plaintiffs' application dated 24<sup>th</sup> April, 2012. I further direct that counsel do file their respective documents and comply with all pre-trial steps within the next 30 days from the date hereof so that this matter can be heard on priority basis. Mention on 31<sup>st</sup> July, 2012 with a view to fixing a hearing date.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18<sup>TH</sup> DAY OF JUNE, 2012.**

**D. MUSINGA**  
**JUDGE**

**In the presence of:**

Muriithi – Court Clerk

Mr. Kipngeno for the 2<sup>nd</sup> Garnishee

No appearance for the Plaintiffs

No appearance for the Defendants

No appearance for 1<sup>st</sup> Garnishee