REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
LAND AND ENVIRONMENTAL LAW DIVISION
CIVIL SUIT NO.921 OF 1998

JAMES WAIBOCI…..……..1ST PLAINTIFF
EUSTACE KENT NKOMBE…….…….2ND PLAINTIFF
VERSUS
PASHITO HOLDINGS LTD……....1ST DEFENDANT
SHITAL BHANDARI……..……..2ND DEFENDANT
COMMISSIONER OF LANDS……...3RD DEFENDANT
WILSON GACHANJA……..……4TH DEFENDANT
MAYWOOD LIMITED……...……5TH DEFENDANT
MITEMA HOLDINGS LIMITED……...……..6TH DEFENDANT
MOVA CONSTRUCTION CO. LTD…….7TH DEFENDANT
DIRECTOR OF SURVEYS……...……..…8TH DEFENDANT

R U L I N G

1. By a notice of motion dated 21st May, 2010, Pashito Holdings Limited, who is the 1st defendant in this case, seeks to have the ex parte interlocutory judgment dated 11th march, 1999, entered against him set aside. The applicant contends that he was never served with the plaint. He maintains that he is the legal owner of the six plots which were subject of the suit and that the plaintiffs have no claim or legal basis against him. The applicant has annexed copies of certificate of lease in its name for the suit properties.

2. Although the plaintiffs/respondents were duly served with the application, they neither filed a response nor attended court for the hearing of the application, nor did the Attorney General who was also served. Hearing of the application therefore proceeded ex parte.

3. I have considered the application before me. I have also carefully perused the court record. I do note that on 11th March, 1999, interlocutory judgment was entered against the 3rd and 8th defendants only. No interlocutory judgment was entered against the 1st defendant. Therefore the application before me is misconceived, as the applicant seeks to set aside a wrong judgment.

4. Accordingly, I strike out the application.

Dated and delivered this 16th day of November, 2010

H. M. OKWENGU
JUDGE

In the presence of: -
Advocate for the plaintiffs absent
Owuor for the 1st defendant
B. Kosgei - Court clerk