



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**

**Civil Appeal 173 of 2003**

**JOHN MEISI OLE SHIRA.....1<sup>ST</sup> APPELLANT**

**OFFBEAT SAFRIS LTD.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**PATRICK KANDARU NATOLOI.....RESPONDENT**

**JUDGMENT**

This is an appeal from the ruling of the Molo Senior Resident Magistrate Mr. R. Kirui delivered in Molo SRMCC Nos. 68, 69, 70, 71, 72 and 74 of 2003 on 29<sup>th</sup> October 2003 in which he dismissed with costs the appellant's application to set aside the ex-parte judgments in those cases. Though served neither the respondent nor his advocates appeared before me to oppose this appeal.

Having considered the matter I agree with Mr. Kagucia, counsel for the appellant, that the learned trial magistrate erred in dismissing the appellant's applications. It is clear from the exhibit annexed to the affidavit in support of those applications that soon after those suits were filed and the appellant was served, the plaintiffs in those suits negotiated a settlement with the appellant. Those plaintiffs signed discharge vouchers and letters addressed to their advocates to withdraw the suits. Copies of those discharge vouchers and the letters were forwarded to their advocate by the appellant. The appellants also wrote to their advocate, Mr. F. Gross who in turn wrote to the plaintiff's advocate asking him to confirm that those cases had been marked as settled. There is nothing on the record to show that the respondents' advocates responded to that letter instead they proceeded with the hearing of the cases.

That was certainly irregular and unprofessional on the part of the respondents' advocates. If the respondents thought the amount paid to them was for medical expenses as they claimed and they had been duped to sign discharge vouchers, the advocates should have said so, so that the appellants would have known what to do.

Besides this alone being a good enough reason to set aside the ex-parte judgments, the learned trial magistrate should also have noted that the appellants' draft defence raised trial issues.

For these reasons I allow this appeal, set aside the learned Senior Resident Magistrate's order of 29<sup>th</sup> October 2003 dismissing the appellants' applications dated 27<sup>th</sup> August 2003 and substitute therefor an order allowing those applications with no order as to costs. The respondents having not opposed this appeal I order that each party bears his own costs of this appeal.

DATED and delivered on this 25<sup>th</sup> day of June, 2009.

**D. K. MARAGA**

**JUDGE.**