

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

(MILIMANI COMMERCIAL COURTS)

Civil Case 274 of 2009

**LABH SINGH
HARMNAM SINGH
LTD.....PL
AINTIFF**

VERSUS

**AHMED SALIM
AHMED
JEIZAN.....
.....DEFENDANT**

RULING

Chamber Summons dated 26/6/2009 brought by applicant seeks to set aside judgment entered against the defendant judgment debtor on 25/5/2009 together with consequential orders and that the plaintiff and his agents be compelled to forthwith restrain to the defendant. All goods seized removed and attached from the defendants premises at Ruby Estate South C. And that the defendant be granted leave to defend the suit. The application is based on grounds stated and affidavit sworn by the applicant. The applicant denies any service of summons to enter appearance. He also denies being indebted to the plaintiff.

I have perused the affidavit sworn by process server. It looks clear and truthful. The applicant did not call the process server for cross-examination or the persons who are named in that affidavit of service. In his draft of defence he states paragraph 2 he does disclose that there was settlement reached on 24/7/2009. the parties agreed that the figure payable was in the sum of Kshs.4,500,000/= and that it is plaintiff who breached the terms of the said agreement by adding extraneous charges and interest on the agreed figure. That story corresponds with that of the plaintiff and I find no reason to set aside judgment entered in default.

For the above reasons, application is dismissed with costs.

Orders accordingly.

Dated, signed and delivered this 13th day of November, 2009.

JOYCE N. KHAMINWA

JUDGE

