



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

**Civil Suit 379 of 2000**

**PETER MACHARIA KINYANJUI.....PLAINTIFF**

**VERSUS**

**TRUCKLINE CONSTRUCTION CO. LTD.....DEFENDANT**

**RULING**

By its Chamber Summons dated 18<sup>th</sup> June, 2009, the defendant seeks under **Order 9 Rules 10 and 11** of the **Civil Procedure Rules**, the setting aside of the ex-parte judgment entered herein on 1<sup>st</sup> August 2001 on the ground that it was not served. In the affidavit in support of the application, Mr. Newton Kamau, a director of the defendant company avers that he first knew of this case when he was served with a notice to show cause on a date he has not specified. In the application itself, it is claimed that the defendant knew of this suit from a Good Samaritan.

The application is strongly opposed. Relying on the replying affidavit, Mr. Karanja for the plaintiff submitted that this application is not made in good faith and is only meant to defeat the plaintiff's efforts to recover the decretal sum.

I have considered the application. The defendant claims that it knew of this suit from a Good Samaritan on a date it has not specified. In the affidavit in support of the application, the deponent, Mr. Newton Kamau, claims that he first knew of this suit when he was served with the Notice to Show Cause. He has also not specified when that was.

In the affidavit of service, the process server stated that on 29<sup>th</sup> November, 2000, he served the summons to enter appearance in this case on a director of the defendant company, one Mr. Kamau, at the defendant's offices at Shaabab next to Nakuru Tanners. He has annexed to that affidavit a copy of the summons to enter appearance duly signed by the Kamau who was served. The defendant and its director, Mr. Newton Kamau, have steered clear of that service. They have not refuted that service or said that the Kamau who was allegedly served is not Mr. Newton Kamau who has sworn the affidavit in support of this application. The defendant has not said anything about the attachment of its properties on 31<sup>st</sup> May, 2005. Its proposed defence is a general denial.

In any application where the applicant seeks the exercise of the court's discretion in his favour, he must be honest with the court. In this case, taking into account all the matters stated herein above, I am satisfied that the defendant has been less than candid in this matter. I am satisfied and I find that the Kamau who was served with the summons to enter appearance in this case is Mr. Newton Kamau who has now sworn the affidavit in support of this application.

From the foregoing, it follows that the defendant's application should be dismissed. However, because the defendant claims that the plaintiff was not its employee, I grant this application on condition that the defendant deposits in court the decretal sum together with interest to date within sixty (60) days of the date hereof failing which this application shall stand dismissed with costs.

**DATED and delivered this 12<sup>th</sup> day of November, 2009.**

**D.K. MARAGA**

**JUDGE.**