



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI  
Civil Case 351 of 200**

**NATIONAL FUND FOR THE DISABLED OF KENYA REGISTERED  
TRUSTEES..... PLAINTIFF**

**VERSUS**

**KENNETH NGANGA MUNGAI  
t/a Mungai & Gakuru Advocates.....DIEFENDANT**

**RULING**

The application before Court is a Chamber Summons dated 9<sup>th</sup> July 2009 brought pursuant to Order IX A Rule 10 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. It is supported by affidavit of **Kenneth Ng'an'ga Mungai** and **Martin Njeri Nyaga**. It seeks to set aside the orders of the court issued on the 1<sup>st</sup> of July 2009.

The Plaintiff opposes the application through a replying affidavit dated 22<sup>nd</sup> July 2009.

The defendant's counsel states that the defendant has a good defence that raises triable issues and as much the matter ought to go for full hearing. That the defendant is not to blame as failure of his advocate to attend court should not be visited upon him. The defence counsel did not attend court as he lost his diary and was not able to recall the

date of the application.

The Plaintiff in opposing the application argued that the application is futile as no replying affidavit had been filed in opposition to the said application. That since rent has now been paid the defence in court is a sham, and setting aside will be a futile exercise in light of the admission.

I have considered submissions by learned counsel and the authorities cited. The issue before me, is whether or not to set aside my earlier orders.

I do agree with the defence counsel that the mistake of counsel ought not to be visited upon his client. In setting aside the order, however I must also consider if the defendant has a plausible defence on record which raises triable issues. I have generally perused the defence and it does not appear to me as if the defendant has an arguable defence. It will therefore be a futile exercise to set aside the orders previously issued.

For the above reasons I decline to grant the application and dismiss the same with costs.

Dated and delivered at Nairobi this 17th day of December, 2009

**ALI –ARONI**

**JUDGE**

**Ruling read in the presence of**

..... For the Applicant

..... For the Respondent