



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 2561 of 1994

1. Land and Environmental Law Division

2. Subject of main suit – land

a) Finalized suit

b) Hearing heard ex parte

3. Application 4.9.07

Seeking leave to set aside ex parte orders. Affidavit by advocate and not client

4. Opposition by respondent.

Principal director Author K. Ngwiri may not exist advocate called director

5. Director – claims he knows nothing of this suit and of application

6. Held: Application 4.9.07 taken and or field without instructions of director principal.

The same is struck out.

7. Case law – Nil

8. Advocates

R. Kinuthia of R. Kinuthia & Co. Advocates for the plaintiff -present

F.K. Chebii holding brief for H. Kinyanjui & Co. Advocates for the defendant

M. Chebii for plaintiffs in Hccc1335/06

KARAGITA SELF-HELP MIXED GROUPPLAINTIFF/APPLICANT

VERSUS

RULING

I: Application 14.9.07 seeking orders to set aside ex parte judgment.

1. When this suit before this court came for hearing, the defendants were absent. It proceeded to trial under order IXb r 3 (a) Civil Procedure Rules and an ex parte judgment duly entered.

2. On 14 September 2007, the advocate on record for the defendant filed an application of the same date seeking to set aside the orders of the court. It was therefore noted that the affidavit so deposed to was by the defendants advocate and not by the Principal Director of the company one A. Ngwiri . The respondents directors was in fact said to be dead according to the plaintiff/respondent.

3. This court gave parties time to summon A. Ngwiri to court. After several attempts he appeared and claimed that he was moving a lot from different residence. That at one time he was ill. He nonetheless knew nothing of this case nor the application before the court. He stated this on oath.

II: Opinion

4. The application of 14 September 2007 was most certainly filed without instructions from Principal Director of the defendants company. I therefore would rule that it cannot stand having been denied by the applicant himself. The same is hereby struck out with costs to the plaintiff/respondent to be paid by J. H. Kinyanjui and Co. Advocates directly.

Dated this 20th day of February 2008.

M.A. ANG'AWA

JUDGE

R. Kinuthia of R. Kinuthia & Co. Advocates for the plaintiff-present

F.K. Chebii holding brief for H. Kinyanjui & Co. Advocates for the defendant

M. Chebii for plaintiffs in Hccc1335