

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
H.C.C.C.NO. 1506 OF 1990

MWANGI NJOROGE MAKARA PLAINTIFF

VERSUS

PETER KARIUKI NJOROGE DEFENDANT

RULING

The Applicant seeks to set aside the Judgment given herein ex-parte by Mr. Justice Lenaola on the 2nd July 2004.

The suit was fixed for hearing in the Registry on the 18th May 2004 when it came before Mr. Justice Lenaola who recorded that the Defendant had been duly served.

This suit was filed in March, 1990 and has been fixed for hearing on many occasions as appears from the record. On 27/5/1992 it came before Justice Githinji when the Plaintiff's advocates appeared but the Defendant was absent. It was adjourned as it was fixed for formal proof.

Thereafter the matter was fixed for hearing on not less than nine occasions eventually coming for hearing on the 17th February, 1998 before Mr. Justice Ole Keiwua again in the presence of the Plaintiff's advocates the Defendant being absent although served.

On 16th September 1998 it came before Mr. Justice Onyango Otieno when the Plaintiff appeared and not the Defendant. It was stood over generally.

On the 18/5/1999 it came before Mr. Justice O' Kubasu in the presence of counsel for both parties however the Defendant's counsel applied for adjournment as he wished to withdraw, which adjournment was granted.

On the 8/3/2001 it came before Mr. Justice Kuloba in the presence of both parties' advocates and was stood over generally.

On 8/4/2003 it came before Justice Kuoba again when the Plaintiff's advocate was present but no one appeared for the Defendant. The matter was again stood over generally. The next hearing was that before Mr. Justice Lenaola who heard evidence and gave Judgment.

In his Replying Affidavit the Defendant alleges that he visited his advocate occasionally and was advised he would be informed when there was a hearing date.

In the Replying Affidavit the Plaintiff states that the hearing notice for the 18/5/2004 hearing date was served on the Defendant's advocate. There is an affidavit of service sworn on the 3/6/2004 by John Mwangi Kiama stating that the Hearing Notice was served on Mr. K.K. Kirori the Defendant's advocate.

The impression I got from the history of the matter related above is that the Defendant was not at all serious in disposing this suit.

This is an old matter and the Defendant has had many opportunities to prosecute his Defence but failed on many occasions to do so. This is not a case where I would exercise my discretion to set the Judgment

aside and I decline to do so. This application is therefore dismissed with costs to the Respondent.

Dated and delivered at Nairobi this 28th day of april,2005

P.J. RANSLEY

JUDGE