

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
Civil Case 2025 of 1999 (OS)

RAJAB MOHAMED SULIMANAPPLICANT

VERSUS

BURHAN MARJANI RESPONDENT

RULING

The Applicants seeks to set aside an ex-parte Judgment given herein on the 1.10.2003. The Application is supported by three Affidavits. It is his case that the Plaintiff' Advocate's clerk believed the matter was not confirmed in the call over list of October, 2003. However, it was confirmed and the Plaintiff and his Advocate failed to appear on the hearing date.

The history of the case is one in which the Plaintiff has been reluctant to persue his claim. A Court has a discretion to set aside an ex-parte Judgment where just however if the court is of the view that the party has been guilty of delaying the hearing of the case as in this case by the Plaintiff failing to fix a hearing date, then a court will be reluctant to assist the Applicant. Further it appears from the Replying affidavit that in HCCC No.3093 of 97 the Defendant obtained Judgment against the Plaintiff in respect of the suit premises whereby an order was made on which the Plaintiff herein was restrained from interfering with the Defendant's peaceful possession of the suit premises.

In the result I do not think this is a case where I should exercise my discretion to set aside the ex-parte Judgment herein.

In the result I dismiss this application with costs to the Respondent.

Dated and delivered at Nairobi this 17th day of June,2005

P.J. RANSLEY

JUDGE