



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL CASE NO.8 "A" OF 2003**

NATIONAL BANK OF KENYA.....PLAINTIFF

V E R S U S

MOHAMED ISMAEL YUNIS.....DEFENDANT

R U L I N G

The application dated 21/7/03 seeks to set aside default judgment entered herein on 7/5/03 and that the Defendant be granted leave to defend the suit.

The grounds are that summons to enter appearance not served. The application is supported by the affidavit of Applicant who challenges the affidavit of service of the process server called Johnson Asega Mmbwanga yet at the hearing of the application they did not call him for cross-examination. The mistake on the affidavit that service was effected on 4/1/2003 before suit was filed was corrected by a further affidavit as a typing error. No challenge was made to this correction.

Annexure B in the Supporting Affidavit shows the Draft Defence proposed.

I have perused the same. It contains simple denial of the debt. It also contains an admission of agreement to lend money. It also contains a vague denial as to rate of interest chargeable on the loan.

The Replying Affidavit shows that the Applicant used to operate a Current Account numbered there and he was allowed overdraft facilities which he failed to service. There is evidence letter dated 20/7/2001 written by Applicant showing how the instalments were paid until 31/5/2001 when two months arrears had occurred. Of interest the Applicant wrote to Bank Manager on 1/8/2000 talking of interest at 28% p.a.

Upon perusing Bank documents exhibited by the Bank I am convinced that the proposed defence is a sham and discloses no triable issues.

I am also of the view that the evidence of service of summons to enter appearance was served upon the Applicant on 4/4/2003 as deponed in the Replying Affidavit filed by Process Server on 19/11/03.

Consequently, I find no merit in this application. Same is dismissed with costs.

Dated at Mombasa this 27th day of February, 2004.

JOYCE KHAMINWA

J U D G E

27/2/04

Mr. Inamdar - H/B for Mburu

Mr. Akanga – for Kilonzo

Ruling read in their present.

JOYCE KHAMINWA, J.

Mr. Akanga

I apply for a copy of proceedings and ruling.

I also apply for temporary stay to enable me to file a formal application.

Court:

1. Let the proceedings be supplied at the registry upon payment required.
2. Temporary stay is granted for a period of 14 days to enable the Applicant to file a formal application.

JOYCE KHAMINWA

J U D G E