

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 458 OF 2002

**NATION MEDIA GROUP LIMITED :::::::::::::::::::: APPELLANT
VERSUS
MOSES KAMANDE KAMAU :::::::::::::::::::: RESPONDENT
RULING**

This is an Application to set aside the Order of this Court made on December 19, 2003 dismissing this appeal on ground of nonattendance of the Advocate for the Appellant. Apparently, the Notice to Show Cause issued under Order 41 r.31(2) was posted to the Appellant's Advocate on November 11, 2003. He has sworn an Affidavit stating that he did not receive the same until January 6, 2004 when he reopened his offices after the Christmas Holidays. His office had been closed for Christmas from December 17, 2003 to January 6, 2004. Meanwhile, the Notice to Show Cause was heard on December 19, 2003, in his absence.

Although it is rather unusual that a notice posted on November 11, 2003 would not be received before December 19, 2003, I am prepared to give the Appellant the benefit of doubt that this actually happened because of a delay in the post office. I do not believe that this decision will cause serious prejudice to the Respondent because this case is neither old, nor has the Appellant done anything to deliberately delay the expeditious resolution of the appeal.

The Civil Procedure Rules (Order 9A Rule 10) confers to this court unlimited discretion to set aside or vary an order entered in default of complying with a procedural requirement. The concern of the court is to do justice to the parties. There are arguable issues on appeal and it is important that the parties are heard on merit.

I, therefore, set aside the order of this Court made on December 19, 2003 and reinstate the appeal for hearing on its merits.

Dated and Delivered at Nairobi this 27th day of February, 2004.

ALNASHIR VISRAM

JUDGE