

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL CASE NO. 844 OF 1995

TRADE BANK LIMITED.....PLAINTIFF

V E R S U S

CLASSIC PRINTERS LIMITED.....DEFENDANT

R U L I N G

On the Application dated 28/8/01

Defendant filed Chamber Summons on 28/8/01 seeking several orders all under Certificate of Urgency the main of which is numbered (e) to set aside or vary default judgment entered against the Defendant and all consequential decrees or orders. The grounds upon which it is sought are set out on the application and in the supporting affidavit of Shirish Patel. The most relevant ground is that the summons was served by registered mail and hence never received by Defendant, the delay in filing defence is excusable. That the judgment amount is colossal. It is sworn that the affidavit of service by Liverson Babu Mdoma is not sworn as required by law.

The Respondent's reply to this is that the law by the date Return of Service was made did not required an affidavit of service.

In reply the Respondent shows that the Defendant is guilty of laches and inordinate delay of more than five years before seeking to set aside judgment.

I have perused the supporting affidavit and the Reply thereof, I am of the view that the Defendant is not serious in this matter. It has adopted a calculated move to delay the cause of justice thereby causing delay in execution of decree issued regularly by this court.

The Defendant has been holding an exparte order since 31/8/01. That the Plaintiff was in receivership is not relevant. The suit was not against the Bank.

After consideration of all matters and arguments of parties I find no reason to justify the setting aside of orders as prayed.

The application dated 28/8/02 is hereby dismissed with costs.

Dated at Mombasa this 13th day of February, 2004.

JOYCE KHAMINWA

J U D G E

Read in presence of: Mr. Kasmani on 13/2/2004.

JOYCE KHAMINWA

JUDGE