

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL SUIT NO. 3060 OF 1994

BONIFACE KIRAGU WAWERU.....PLAINTIFF

-VERSUSJAMES

K. MULINGE.....1ST DEFENDANT

CURIOS FACTORY (sued as a firm).....2ND DEFENDANT

RULING

In this application filed on 26th March, 2003, the 2nd defendant, Peter M. Katu seeks orders setting aside this court's judgement entered against him ex parte on 4th February, 2003 or to review it on the grounds that he was not aware of the hearing date and that vital evidence was not disclosed by the respondent/plaintiff which evidence he does not specify. The respondent however opposes the application strenuously.

The respondents suits against the applicant and one James K. Mulinge which came for hearing out judgment on 6th February, 2003 was as against the applicant for arrears of rent at shs.5,000/- per month until the date he left the premises. While so retaining www.kenyalawreports.or.ke possession he also sublet the premises to subtenants who resisted distress for rent leading to an award of substantial damages against the respondent. As a result of this unchallenged evidence a substantial award of Shs.1,016,500/- plus interest of such amount was made against the applicant.

The applicant now wants to have the judgement set aside as the failure to attend was caused by his advocate and that he has a good defence. The respondent contends to the contrary.

Looking at the issues herein, it is possible that the applicant could not attend due to his counsel's failure to inform him. This is a common occurrence. It is also observed that the award is fairly high and includes damages awarded to a third party for the applicant is being held responsible. If the matter is therefore reopened, the court will be able to determine whether or not the applicant was liable for damages paid to a third party. The court's discretion will not have therefore been in vain if the matter is reopened. www.kenyalawreports.or.ke

In view of the above, I grant prayer 2 of the application as prayed. The applicant to pay the costs of the application and the throw away costs of the suit to the respondent. Orders accordingly.

Delivered this 8th day of April, 2003.

G.P. Mbito

JUDGE