

REPULIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 5400 OF 1993

GEORGE T.N. KARIUKI.....PLAINTIFF
V E R S U S
EAST AFRICA BUILDING SOCIETY.....DEFENDANT

R U L I N G

Chamber Summons dated 29.11.2002 seeks an order of this Court to set aside the order of dismissal of 27.11.2002 and have the suit reinstated for hearing. The Applicant in his affidavit of 29.11.2002 depones that he was standing outside the corridor of the Court and not hearing his case called out when he decided to ask the clerk about it and he was told that the case had been called out. But the Respondent opposed this application relying on affidavit of Jayne Njeri Gathaara dated 5th December 2002 which says that in fact the case was called out. The deponent further states that the Applicant would not have been heard in any case because he had not complied with the Court order of 6.3.2002 before Hon. Kuloba J., ordering him to file documents to show the reasons for his failure to prosecute the matter. The dismissal application was to be filed if he still failed to do so within a reasonable time.

It may be that the Applicant had actually failed to comply but this would be relevant if he attempted to prosecute or defend the application for dismissal. I am not fully convinced after hearing the parties that the Plaintiff's intention is to use treachery or tricks to delay the hearing and thereby interfere with the cause of justice as Harris J. said in SHAH V. MBOGO 1967 EA 116. The application is allowed but without prejudice to the previous order of Kuloba J. No order as to costs.

DATED and DELIVERED at Nairobi this 23rd day of May 2003

A.I. HAYANGA
JUDGE
Read to Mr. Ngaruiya
Read to Mr. Wahome
A.I. HAYANGA
JUDGE