

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

civ case 998 of 93

MUTUMA ANGAINEPLAINTIFF

V E R S U S

NATION NEWSPAPERS LTDDEFENDANT

R U L I N G

This is an application to set aside the dismissal order made by this court on the 14th January 2003. According to affidavit of Chacha Odera sworn on 3rd January 2003 counsel admits that he was misled by a copy of the letter in that file showing that the dates for hearing were 15th and 16th January 2003. So he discounted the possibility of hearing being on 14th January 2003. But Miss Berly Ouma in her affidavit sworn on 21st of March opposes the application saying the date was indeed confirmed for that date since she corrected it.

I think what is disclosed here is inadvertence by the applicants counsel to confirm factually and mentally that the date was 14th January 2003. I have noted the reference to the 3 dates of 14th, 15th and 16th and I appreciate innocent mistake could have been made. I am ready to apply the principle stated by Harris J. in Shah vs. Mbogo 1967 EA 116 that the courts discretion to set aside exparte judgment is intended to be exercised to avoid injustice on hardship and resulting from accident inadvertence or excusable mistake or error, but not to assist a person who had deliberately sought (whether by evasion or otherwise) to obstruct or delay the cause of justice the motion should be refused.

I see here there was no such attempt to obstruct or delay. This was excusable mistake or inadvertence and allow the application. Cost of the application to the respondent.

Delivered this 11th day of July 2003

A. I. HAYANGA

J U D G E

Read to Ms Ouma

And Mr. Okech

11.7.2003