

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
MISCELLANEOUS CIVIL APPLICATION NO. 257 OF 2001

TUDOR SECURITY SERVICES LIMITEDAPPLICANT

VERSUS

JONES KIMONDO WAMBUARESPONDENT

RULING

This Notice of Motion is filed under Order 50 rule 17, Order 50 rule 1, Section 3A Civil Procedure Act. The application was filed on 16.1.2002 to set aside orders made on 4.12.2001. This was one month after the order was made.

The record shows that on 28.11.2001 an application of which the orders were made was fixed for hearing on 4.12.2001 by consent of counsel for both parties. On that day counsel for the applicant did not appear in court nor did she send a representative. She says she failed to appear because she had not entered the matter in her diary for that day but on the following day 5.12.2001. She also states that on 4.12.2001 she had traveled to Malindi to attend to SPMC 288/1998. She now seeks to set aside the orders granted to the respondent on that day in the court of Hon. Judge Ouna. Compliance of which orders the respondent had already on 28.12.2001 paid to court Shs.100,000/= as per receipt B212527 and had filed a memorandum of appearance on 6.12.2001.

The court has discretion to set aside orders obtained ex parte whether under Order 50 Rule 17 or any other orders. In this case there was considerable delay of over one month before this application was made by which it can be said that the orders sought to be set aside had been executed or complied with. There is now an appeal filed and the applicant may if considers appropriate raise the issue of the orders in a cross petition. For these reasons I dismiss the application with costs.

Dated this 24th day of October 2002.

J. KHAMINWA

COMMISSIONER OF ASSIZE