

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
DIVORCE CAUSE NO 24 OF 1999

G K M PETITIONER

VERSUS

R A M RESPONDENT

R U L I N G

From what has been brought to my attention during the hearing of this Chamber Summons dated 27th September 2002 and filed by the petitioner G K M the same be and is hereby granted in terms of prayers number 3 and number 4 for the following reasons:

Firstly when considering the issue of justice and hardship the position of all the parties in the suit must be considered.

Secondly, honesty counts greatly in an application to set aside an exparte court order or judgment and in this application I am impressed by honesty on the part of the Applicant in that although things were mixed up in the office of the Applicant's advocate, they have come out to clearly admit to the court that service of the hearing notice was effected and that has been followed by their explanation why they failed to appear.

Accordingly, and this is the third reason, I am satisfied that the Applicant has brought himself within the application of the law as set out in paragraph 2 (a) sub paragraph (iv), in the case of Shah v Mbogo & Another, Civil Case No. 1087/65 High Court Nairobi in that the court ought to exercise its discretion in favour of the Applicant in order to avoid injustice or hardship resulting from inadvertence or excusable mistake or error the Applicant not having deliberately sought (whether by evasion or otherwise) to obstruct or delay the cause of justice.

Fourthly, it is in the interest of justice that the orders such as those granted on 4th July 2002 are granted following an Interpartes hearing where circumstances Justify as in this case.

To conclude, the Applicant, though successful in this application, will pay costs of this application to the Respondent R A M.

Dated this 14th Day of November 2002.

J.M. KHAMONI

JUSTICE