

IN THE HIGH COURT OF KENYA AT NAIROBI

HIGH COURT CIVIL CASE NO. 332 OF 1999

EPHANTUS WANJOHI1ST PLAINTIFF

SIMONN WANG'OMBE..... 2ND PLAINTIFF

V E R S U S

STEPHEN MACHARIA.....1ST DEFENDANT

SAMUEL NJOROGE2ND DEFENDANT

MONICA NJERI.....3RD DEFENDANT

DAVID KIMAMA.....4TH DEFENDANT

R U L I N G

This is an application to set aside an interlocutory judgment entered against the Defendants in default of appearance.

The Defendants do not deny having been served with summons to enter appearance and the Plaintiff in this matter. They, however, state that upon receipt of the Summons and the Plaintiff, they forwarded both documents to the insurers of the motor vehicle for which this action relates. They expected the insurer to enter appearance and file defence on their behalf. That insurer is now under receivership. They are sued in their representative capacities as the administrators of the estate of the real owner of the motor vehicle who is now deceased. The Defendants in their proposed defence aver that the accident and damage was caused, or substantially contributed to, by the negligence of the 2nd Defendant.

I have considered the matters in this case and I am of the view that it is in the interests of justice that the Defendants should be allowed to defend the action against them. They trusted that the insurer would take action to safeguard their interests but that did not happen.

They have acted diligently in this matter and they cannot be said to be motivated only by a desire to obstruct or delay the cause of justice. The Defendants shall pay the Plaintiff's thrown away costs.

I, therefore, allow this application in terms of the orders above.

DATED and DELIVERED at NAIROBI this 19th day of September, 2001.

ALNASHIR VISRAM

JUDGE