

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO.3049 OF 1992

B.N. GEORGIADISPLAINTIFF

VERSUS

SATISH B. SHAH & ANOTHER..... DEFENDANTS

R U L I N G

This application seeks orders to set aside the judgment, which was entered against the applicant/defendant on 23/7/1997. The applicant had filed a defence but failed to file a list of documents which led to the striking out of the defence and entering Judgment in favour of the Plaintiff. This is admitted by the defence despite the fact that they were given humble time. But counsel for the defendant submits that there is a good defence to the suit and urges this court to grant the orders sought so that the suit proceeds to hearing on merit.

I have looked at the defence filed herein and I am satisfied that it contains reasonable defence to the Plaintiff's claim.

There are ample authorities to the effect that, notwithstanding regularity of ex-parte judgment, a court may set it aside if a defendant shows that he has a reasonable defence on the merits **KINGSWAY TYRES AND AUTOMART LTD VS. RAFIKI ENTERPRICES LTD (CIVIL APPEAL NO.220 OF 1995)** (Unreported) **TREE SHADE MOTORS LTD VS. D.T. DOBIE AND COMPANY (K) LTD CIVIL APPEAL NO.38 OF 1998**. There are no limits or restrictions on the Judge's discretion except that if he does vary the Judgment he does so on such terms as may be just. The main concern of the court is to do justice to the parties and the court will not impose conditions on itself to fetter the wide discretion given to it by the rules.

This was stated by DUFFUS P in **P.N PATEL V. E.A. CARGO HANDLING SERVICES LTD 1974 E.A. 75** at page 76 C and E For the above reasons the applicant's application is allowed. The exparte Judgment entered herein against the defendant on 23/7/1997 is set aside on the following terms.

1. Deposit of the whole of the decretal amount to court. Within 14 days
2. The Plaintiff/Respondent is entitled to costs thrown away and payment to be made before the next hearing date.

These are the orders of this court.

Dated and Delivered at Nairobi this 9th day of February, 2000

J.L.A. OSIEMO

JUDGE