



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
CIVIL CASE NO. 707 OF 1999**

**JASVINDER SINGH ENTERPRISES.....PLAINTIFF  
VERSUS  
PHILIP NDUNDA.....DEFENDANT**

**RULING**

In this application dated 15.5.2000 the applicant is asking for the judgment delivered on 2.11.99 be set aside. The grounds for the application are that the defendant had not been served with the summons and was therefore not aware of the hearing date.

The application is opposed on the ground that the setting aside the judgment will serve no purpose given that the judgment was properly entered.

In reply to the affidavit, the defendant in paragraphs 5 and 6 swears that he does not own the vehicle, which is supposed to have been involved in the accident. He also says that he was not served with the summons as alleged in the Return of Service by the Process Server.

The search carried out in Registrar of Motor Vehicles show that the owner of the vehicle KAB 104M is somebody else other than the Defendant.

While I agree with Mr. Oluoch that the records of the vehicle from the registrar of Motor Vehicles is not a conclusive evidence of ownership it must be accepted that such record go along way to determine who the owner would be.

The defendant's averments in the affidavit in support and the copy of the record from the Registrar of Motor Vehicles raise the probability that the Defendant may not be the owner of the vehicle.

This probability can only be confirmed or dispelled in a hearing. When parties come to court to seek justice under our system, justice can only be seen to have been given if both parties are given a fair hearing. The Defendant is entitled to such a hearing and accordingly the judgment is set aside and a date shall be taken for a full hearing. The costs of this application shall be in course.

**Delivered and dated this 21st day of July, 2000.**

**KASANGA MULWA**

**JUDGE**