

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO.3362 OF 1994

ANDREW MUTISYA RAMUTIPLAINTIFF
VERSUS
JOHN MATIRI MANZE & 3 OTHERS DEFENDANT

R U L I N G

The applicant 1st Defendant through this chamber summons seeks orders that the interlocutory judgment entered against him on 7th June, 1997 be set aside. He submits that failure to enter appearance and defence was not as a result of his willful conduct but due to the failure and/or omission of his advocate hitherto on record to carry out instructions to the later.

The application is opposed on the ground that the applicant had no explanation as to why he failed to enter appearance and enter defence.

But the applicant has produced evidence that he did on 30/3/1997 instruct the firm of M/S M. MAKUNDI & Co., Advocates to act for him and he discovered that firm had not carried out his instructions, he again on 7/7/1998 did instruct the firm of M/S P.M. MATATA & Co., Advocates to act for him. He has annexed receipts of payments.

This is reasonable explanation on the part of the applicant/1st Defendant for failure to enter appearance and file a defence. He was failed by his advocates.

It can't be said that this application lacks in merit and therefore it ought to succeed.

The application is allowed and the Judgment entered against the 1st Defendant on 7/6/1997 is hereby set aside and the 1st defendant granted leave to file his defence.

The annexed draft defence herein deemed as properly filed and served on payment of the court fees.

Orders accordingly.

Dated and delivered at Nairobi this 4th day of July, 2000

J.L.A. OSIEMO
JUDGE