

High Court of Kenya at Nairobi October 27, 2000

Milimani Commercial Courts

T Mbaluto, Judge

Civil Case No 1058 of 2000

Charles Mwalia T/A Holiday Enterprises

v

Kenya Bureau Of Standards

RULING

October 27, 2000 T Mbaluto, Judge delivered the following ruling. This is an application under Order IXA Rules 10 and 11, of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. The application is supported by an affidavit sworn on October 2, 2000 by Michael J Iseme, an advocate of this Honourable Court and a partner in the firm of Iseme, Kamau & Maema Advocates, which said firm is on record for the applicant. The application is opposed by the respondent on the ground that no explanation has been put forward by the applicant to justify the grant of the orders sought. It is observed that the order sought is the setting aside of a default judgment entered herein.

In opposing the application, the respondent has deponed in his affidavit sworn on October 5, 2000 that the defendant has offered no explanation as to why it failed to make an appearance or to file a defence within the prescribed period. The same point was taken by the respondent's advocate Mr Nzamba Kitonga.

An application under Order IXA 10 and 11 of the Civil Procedure Rules is brought where judgment has been entered for non-appearance and/or default of defence. Given that fact, it should be obvious that in such an application there has to be an explanation as to how and why non appearance and failure to file defence occurred. In the instant case, the affidavit sworn by Mr Iseme does not give any such explanation and consequently, there is no basis upon which the orders sought can be granted. The application therefore lacks substance and cannot possibly be granted.

For those reasons, the application is dismissed with costs.