

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 607 OF 1995

RAMCO INVESTMENT LTD.....PLAINTIFF

versus

RAJU ESTATE AGENCY LTD.....DEFENDANT

RULING

This is an application by the defendant by way of Chamber Summons under Order 9 of the Civil Procedure Rules and Order 21 Rule 22 to set aside exparte judgment and stay execution of the decree herein.

The exparte judgment was entered in favour of the plaintiff on an application for summary judgment. The learned counsel for the defendant failed to appear on that day. The failure to appear has been sufficiently explained in the affidavit sworn in support of this application. Since the exparte judgment is never on merit I believe no injustice will be occasioned to the plaintiff if orders sought are given. I note also from the pleadings that some of the prayers sought require formal proof which was not called in this case.

Accordingly, the orders sought are hereby granted to the defendant/applicant who shall pay the costs of this application. Orders accordingly

Dated and delivered at Nairobi this 31st day of July 1998

A. MBOGHOLI MSAGHA

JUDGE

Morara for respondent

Tiego for Billing for applicant