



REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA PEAL
NAIROBI

Civil Appeal 184 of 1994

ESTHER NJERI NGUGI.....
APPELLANT

AND

GOOLAM HAJEE.....
RESPONDENT

**(Being an appeal from the ruling of the Honourable Lady Justice Effie Owuor delivered on 4th
October, 1994**

IN

H.C.C.C. NO. 178 OF 1989)

REASONS FOR JUDGMENT OF THE COURT

On November 8, 1995 we heard this appeal from the ruling of the superior Court (Owour, J.) delivered on October 4, 1994 when we dismissed the appeal with costs. We now give our reasons.

The appeal was against the decision of the learned Judge dismissing the appellant's application to set aside an ex-parte judgment entered against her on November 22, 1992. The learned Judge declined to exercise her discretion to set aside the ex-parte judgment and despite the gallant attempt made by Mr. Onsando Osiemo for the appellant we were not persuaded that there were any grounds for this court to interfere with the exercise of the discretion by the Judge. Normally, this Court does not interfere with the exercise of the discretion of a Judge in the superior Court save as enunciated in the case of MBOGO V. SHAH 1968 EA 93 but none of the matters therein set out arise here to warrant or justify any interference.

It was submitted that the gist of the appeal was non-service of the relevant papers upon the appellant as these were sent by post when service should have been effected at the physical address of the then appellant's advocate, Mr. Wanjala c/o Faculty of Law, Parklands Campus at Nairobi. We find no merit in this submission. It was the appellant who instituted the proceedings in the superior Court by her plaint (undated) where her "address of service for the purpose of this suit was specifically stated as c/o S.M.C. Wanjala, Advocate, P.O. BOX 30197, Nairobi." In the circumstances, we do not find anything wrong in service by post.

Having carefully considered the material before us and all the circumstances of the case we are satisfied that the Judge was plainly right. For that reason, the appeal is dismissed with costs.

Dated and delivered at Nairobi this 16th day of November, 1995.

J. M. GACHUHI

.....

JUDGE OF APPEAL

R. O. KWACH

.....

JUDGE OF APPEAL

A.A. LAKHA

.....

JUDGE OF APPEAL.