



Case Number:	Civil Case 351 of 2008
Date Delivered:	17 Dec 2009
Case Class:	Civil
Court:	High Court at Nairobi (Milimani Law Courts)
Case Action:	Ruling
Judge:	Abida Ali-Aroni
Citation:	NATIONAL FUND FOR THE DISABLED OF KENYA REGISTERED TRUSTEES v KENNETH NGANGA MUNGAI t/a Mungai & Gakuru Advocates [2009] eKLR
Advocates:	-
Case Summary:	-
Court Division:	-
History Magistrates:	-
County:	-
Docket Number:	-
History Docket Number:	-
Case Outcome:	-
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

Civil Case 351 of 200

**NATIONAL FUND FOR THE DISABLED OF KENYA REGISTERED
TRUSTEES..... PLAINTIFF**

VERSUS

KENNETH NGANGA MUNGAI

t/a Mungai & Gakuru Advocates.....DEFENDANT

RULING

The application before Court is a Chamber Summons dated 9th July 2009 brought pursuant to Order IX A Rule 10 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. It is supported by affidavit of **Kenneth Ng'an'ga Mungai** and **Martin Njeri Nyaga**. It seeks to set aside the orders of the court issued on the 1st of July 2009.

The Plaintiff opposes the application through a replying affidavit dated 22nd

July 2009.

The defendant's counsel states that the defendant has a good defence that raises triable issues and as much the matter ought to go for full hearing. That the defendant is not to blame as failure of his advocate to attend court should not be visited upon him. The defence counsel did not attend court as he lost his diary and was not able to recall the date of the application.

The Plaintiff in opposing the application argued that the application is futile as no replying affidavit had been filed in opposition to the said application. That since rent has now been paid the defence in court is a sham, and setting aside will be a futile exercise in light of the admission.

I have considered submissions by learned counsel and the authorities cited. The issue before me, is whether or not to set aside my earlier orders.

I do agree with the defence counsel that the mistake of counsel ought not to be visited upon his client. In setting aside the order, however I must also consider if the defendant has a plausible defence on record which raises triable issues. I have generally perused the defence and it does not appear to me as if the defendant has an arguable defence. It will therefore be a futile exercise to set aside the orders previously issued.

For the above reasons I decline to grant the application and dismiss the

same with costs.

Dated and delivered at Nairobi this 17th day of December, 2009

ALI –ARONI

JUDGE

Ruling read in the presence of

..... For the Applicant

..... For the Respondent



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