**Patel v EA Cargo Handling Services Ltd**

**Division:** Court of Appeal at Mombasa

**Date of judgment:** 14 February 1974

**Case Number:** 2/1974 (26/74)

**Before:** Sir William Duffus P, Law Ag V-P and Musoke JA

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**Appeal from:** High Court of Kenya – Sir Dermot Sheridan, J

*[1] Civil Practice and Procedure – Setting aside – Ex parte judgment – Discretion of court – Whether*

*limited – Civil Procedure* (*Revised*) *Rules* 1948, *O.* 9*A*, *r.* 10 (*K.*).

**Editor’s Summary**

The appellant obtained a default judgment against the respondent, which judgment was set aside by the

High Court. On appeal against that order the appellant contended that before a default judgment can be

set aside the court must be satisfied both that there is a good defence and that there was a cause for the

delay in appearing.

**Held –**

(i) the discretion of the court is not limited (*Evans v. Bartlam* (1) followed);

( ii) the judge had properly exercised his discretion.

Appeal dismissed.

**Cases referred to Judgment:**

(1) *Evans v. Bartlam*, [1937] A.C. 437, [1937] 2 All E.R. 647.

(2) *Kimani v. McConnell*, [1966] E.A. 547.

(3) *Mbogo v. Shah*, [1968] E.A. 93.