



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**CIVIL CASE NO. 110 OF 2009**

**1. SYLVESTER NYANJE KARISA**

**2. GILBERT KARISA**

**3. FRANCIS CHARO.....PLAINTIFFS/APPLICANTS**

**=VERSUS=**

**1. MWANGIRANI PEMBE**

**2. NICHOLAS KOMBE PEMBE**

**3. ROBERT KITSAO (*son and personal representative of the Estate of the late PEMBE MUROGO KITHI*)**

**4. THE DISTRICT LAND REGISTRAR, KILIFI**

**5. THE ATTORNEY GENERAL.....DEFENDANTS/RESPONDENTS**

**RULING**

1. This court dismissed the Plaintiff's suit with costs on 18<sup>th</sup> March 2012 for non-attendance.
2. The Plaintiff has filed an Application dated 22<sup>nd</sup> May 2013 seeking the leave of the court to reinstate the suit pursuant to the provisions of Order 12 Rule 7 of the Civil Procedure Rules.
3. The Application is supported by the Affidavits of the 1<sup>st</sup> Plaintiff, the Plaintiff's Advocate, Beja Nduka Beja and Samson B. Kibeja.
4. The Plaintiff's Advocate has deponed that he was unwell and could not attend court on 18<sup>th</sup> March 2013 when the matter came up for hearing. He instructed his pupil, Beja Nduka to call an advocate in Malindi with a view of holding his brief.
5. The Plaintiff's advocate has further deponed that the said pupil called Mr. Samson B. Kimbeja who in turn instructed Mr. Obaga to hold his brief but counsel did not address the court when the matter was called out.
6. The depositions by the Plaintiff's Advocate have been supported by Beja Nduka and Samson Kimbeja in their respective affidavits.
7. The 1<sup>st</sup> Plaintiff on his part deponed that he came to court after the matter had been called out. The 1<sup>st</sup> Plaintiff stated that he had unknowingly gone to the old court just to be informed that the court had relocated to the new building.
8. I have considered the Defendant's response to the application.

9. The reasons for non-attendance given by the Plaintiff and his counsel when the matter was called out on 18<sup>th</sup> March 2013 are satisfactory. In the circumstances, I will exercise my unfettered discretion in favour of the Plaintiffs.
10. It will be in the interest of justice to allow the Application for setting aside the order dismissing the suit so that the matter can be heard and determined on merit.
11. For the above reasons, the Application dated 22<sup>nd</sup> May 2013 is allowed but costs are awarded to the Defendants in any event. The Plaintiffs shall also pay the Defendants the costs that were incurred by the Defendants on 18<sup>th</sup> March 2013 when the matter came up for hearing.

Dated and Delivered in Malindi this 20<sup>th</sup> day of **July**, 2013

**O. A. Angote**

**Judge**