



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL CASE NO. 927 OF 2002

MARTIN PHIRI PLAINTIFF

VERSUS

1. BERKELEY HACKETT

2. EZEKIEL NANDAMA..... DEFENDANTS

R U L I N G

This case came up for hearing on **5th of December 2011**. At 9.55 a.m., I dismissed the case with costs under **Order 12, rule 3(1)** of the **Civil Procedure Rules** (the **Rules**) for non-attendance by the Plaintiff or his advocate.

The Plaintiff has now applied by **notice of motion dated 7th December 2011** for an order to set aside the dismissal and reinstate the case for hearing. The application is opposed by the 1st Defendant. The 2nd Defendant is said to have died sometime back, and there has not been any substitution.

I have read the supporting and opposing affidavits. I have also considered the submissions of the learned counsels appearing.

It turns out that my (Waweru, J's) cause list for 5th December 2011 indicated that I would start hearing my matters at 11.00 a.m. and not at the usual 9.00 a.m. This is common ground.

The Plaintiff and his counsel, it has been deponed in the supporting affidavit, did therefore not attend court until 10.45 a.m., only to find that the case had already been dismissed.

Had this fact (of my court being indicated in the cause list to start at 11.00 a.m. instead of 9.00 a.m. that day) been brought to my attention, I would have started court at 11.00 a.m. as indicated in the cause list, particularly in the case of those matters where all parties were not present. Unfortunately this fact was not brought to my attention, either by my clerk or by any counsel or party present. I did not myself notice this irregularity.

It was thus due to the mistake of the court (in indicating 11.00 a.m. instead of 9.00 a.m. as the court's starting time) that this suit was prematurely dismissed at 9.55 a.m. on 5th December 2011.

This application must thus be allowed, and it is hereby allowed. The order of 5th December 2011 is

hereby set aside and the suit reinstated for hearing.

There will be no order as to costs to the application. It is so ordered.

DATED AT NAIROBI THIS 16TH DAY OF JANUARY 2012

H.P.G. WAWERU
JUDGE

DELIVERED AT NAIROBI THIS 20TH DAY OF JANUARY 2012