



REPUBLIC OF KENYA

IN THE HIGH COURT

AT BUNGOMA

CA NO.22 OF 2006

(Appeal arising from original record of BGM CM CC NO.87 of 1997)

**MARY NEKESA WAFULA through next of kin BEN
WAFULAAPPELLANT**

~VRS~

**BOARD OF GOVERNORS FRIENDS SCHOOL
KAMUSINGA.....RESPONDENT**

RULING

This is a ruling on an application of the Respondent, B.O.G Friends School Kamusinga seeking to set aside orders made on 24/05/2010 and to reinstate the Applicant's application dated 22/02/2010.

The facts are that the application was dismissed for non attendance of the Plaintiff's counsel Mr. Khakula. The Applicant has annexed two cause lists for High Court for 24/05/2010 one being the main cause list and the other the other the addendum. The matter was listed in the addendum which the counsel had not seen when he attended court in the morning. The matter was called later after Mr. Khakula had left the court. The failure to prosecute the application was due to a mix-up.

The application was opposed by Mr. Waswa for the Respondent on grounds that the application was listed and there is no sufficient cause to grant the orders sought.

I have considered arguments of both parties in this application. I have also seen the annexures. The matter was not on the main cause list but on the addendum. It is likely that the addendum was not brought to the notice of the counsels by the court clerk in good time. This may have led to Mr. Khakula leaving the court room under the impression that his case was not listed. I find the explanation satisfactory and I am satisfied that the failure by the counsel to attend court was not deliberate.

The application is merited and is hereby allowed as prayed. The application dated 24/05/2010 is hereby reinstated. Costs in the cause.

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F. N. MUCHEMI

JUDGE

Ruling dated and delivered on the 10th day of March, 2011 in the presence of Mr. khakula Junior for Applicant and Mr. Waswa for Respondent.

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F. N. MUCHEMI

JUDGE