



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUNGOMA**  
**CIVIL SUIT 64 OF 2001**

1. TOM NALIANYA MUNIAFU
2. GEORGE KHAOYA MUNIAFU
3. DAVID MWALAKHA MUNIAFU.....APPLICANTS
4. RODGERS MUTONGWA MUNIAFU
5. MIKE NATEMBEYA MUNIAFU
6. ERICK KITUYI MUNIAFU
7. MATASI MUNIAFU
8. SIMIYU MUNIAFU

~VRS~

**CHRISTOPHER MWENYA MUNIAFU .....RESPONDENT**

**AND**

**SIUMA TRADERS.....AUCTIONEERS**

**RULING**

This is a ruling on the Plaintiffs' application dated 8<sup>th</sup> March 2005 seeking to set aside orders of dismissal of suit made on 7/03/2005. It is grounded on the affidavit of the first Plaintiff/Applicant, Tom Nalianya Muniafu.

The grounds are that the Applicants had transport problems on the material day and arrived in court late. Further that the suit is based on a succession cause and of utmost importance to the Applicants. It would be in the interests of justice to have the suit determined interparties by the court.

The application was opposed on grounds that the Plaintiffs have lost interest in the suit. They are seven in number and none of them attended court on the material day. Their counsel said he was engaged in Kikuyu Court of Appeal on the material day but no evidence to that effect was produced. It is the Respondent's conviction that the matter herein should be sorted out in succession cause no.38 of 1983.

I have looked at the plaint whose prayers seek to compel the administrator of the deceased's estate in succession cause no.38 of 1993 to include the Plaintiffs herein as beneficiaries in the cause. The Respondent is the elder brother of the Plaintiffs. He is the administrator in the succession cause and had the grant confirmed in his favour. The orders sought herein are pertinent matters in the succession cause no.38 of 1983. The Plaintiffs are entitled to a remedy subject to proof in the said succession cause. The prayers sought in the originating summons herein manifest into a multiplicity of suits.

The Plaintiffs are seven in number. They have not convinced the court that on the day the case was dismissed that they were all traveling in one vehicle which in order to be wholesomely affected by the said transport problems. Neither have they shown the court that

they live in one area and had to travel together. The reason that they had transport problems is not convincing. The affidavit in support is sworn by only one Plaintiff and I am not convinced that the same problem if any applied to all the Plaintiffs.

As argued by the Respondent, the failure by the Plaintiffs' counsel to attend court has not been justified in that no cause list or hearing notice has been annexed for the Kikuyu Court of Appeal case.

I do not find any merit in the application and I dismiss it with costs.

**F. N. MUCHEMI**  
**JUDGE**

Dated, Delivered and Signed at Bungoma this 9<sup>th</sup> day of February, 2010.

In the absence of the parties in open court.