



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Civil Suit 232 of 2001

STEPHEN WAERU.....PLAINTIFF

VERSUS

THE SCHOOL COMMITTEE
NYANDUNDO PRIMARY SCHOOL.....1ST DEFENDANT

DIRECTOR OF SETTLEMENT.....2ND DEFENDANT

RULING

The plaintiff seeks through his application dated 12th July 2010 and brought under **Order 44 Rule 1(2)** of the **Civil Procedure Rules** a review and setting aside of the last order in my ruling of 18th November 2009. A brief history of this matter will elucidate the point raised in the application.

On 17th February 2003 the Honourable Justice Muga Apondi heard this case ex-parte and delivered judgment on 17th December 2003 in favour of the plaintiff. Subsequently the defendants applied to set that judgment aside. In the course of hearing that application which had been adjourned several times, the defendants raised a preliminary objection that the matter was res judicata. I overruled that preliminary objection and directed that the suit be set down for hearing.

Miss Kabaria's contention that that direction as it were set aside the ex-parte judgment is erroneous. That direction was obviously inadvertent and in error as the suit had already been heard and judgment delivered. The direction should have been that the hearing of the application to set aside the judgment be completed. In the circumstances I allow this application and set aside the direction that the suit be set down for hearing and substitute therefor a direction that the hearing of the application to set aside the ex-parte judgment be completed.

DATED and DELIVERED this 30th day of July, 2010.

D. K. MARAGA
JUDGE.