

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL CASE NO. 1989 OF 1998

PERIS WANJIKU MUKURU.....PLAINTIFF

VERSUS

STEPHEN KAHURA NJUGUNA.....DEFENDANT

RULING

This is an application by way of Chamber Summons under order XIB rules 2 and 8 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act seeking an order that the dismissal order made on 9th November, 2009 is set aside. The cited order is wrong because there is no order XIB in Civil Procedure Rules but, going by the application and the orders sought, I believe counsel may have wanted to cite order 1XB rules 2 and 8 of Civil Procedure Rules. That notwithstanding I have decided to address the application on merit.

On 9th November, 2009 this matter was placed before Onyancha J, and since both parties were absent the learned judge proceeded to dismiss the application dated 4th March, 2008. The present application gives reasons as to why counsel for the applicant was absent. I have looked at the proceedings and related the same to the application and the ultimate interest of the parties herein. I am also guided by the Civil Procedure Act and in particular Sections 1A and 1B as amended by Act No.6 of 2009. As a guiding principle, I am mandated to uphold the overriding objective of the Act to facilitate just, expeditious and proportionate resolution of this case. I also bear in mind that a mistake of an advocate should not be visited upon a client or litigant.

In that regard therefore, I am inclined to allow the application and set aside the said dismissal order. The end result is that, the application dated 4th March, 2008 is hereby reinstated and the costs shall be in the cause.

Orders accordingly.

Dated, signed and delivered at Nairobi this 22nd day of July, 2010.

A. MBOGHOLI MSAGHA

JUDGE