



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT KERICHO**

**Civil Case 72 of 2006**

1. Land Law
2. Civil Practice and Procedure
3. Subject of main suit

a) Land

LR Kericho/Manaret/109

now LR Kericho/Manaret/S.S 600

b) Fraud

4. Application 1<sup>st</sup> April, 2009

- a) Suit taken out of the hearing list for 16<sup>th</sup> March, 2009 but put down for mention
- b) Parties absent except advocate for 1<sup>st</sup> defendant who prayed matter be struck out/dismitted for non-attendance.

5. **Held**

- a) The attendance of Plaintiff was required to court on 16<sup>th</sup> March, 2009 despite indicating that matter would not proceed.
- b) Application brought without inordinate delay.
- c) Misunderstanding by applicant on attendance to court.
- d) Orders dismissing suit discretionary and granted for applicant.

To set aside dismissed orders.

6. **Case Law** – Nil.

7. **Advocate**

P.C. Kosgey advocate instructed to hold brief by the firm of M/S Juma & Co. advocates

for the Applicant/Plaintiff – present

H.O. Orayo advocate instructed to hold brief by the firm of M/S Nyaramba for the 1<sup>st</sup> defendant – present

N/A for the 2<sup>nd</sup> defendant

**BENSITA CHANGAMU OSORO ..... PLAINTIFF**

**VERSUS**

**SUSAN NYANGATE MAGETO ..... 1<sup>ST</sup> DEFENDANT**

**GABRIEL KIPKORIR LANGAT ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

**I: Background**

1. On the 16<sup>th</sup> March, 2009 the applicant herein failed to attend Court. His suit was dismissed for non-attendance.
2. This matter concerned land involving LR Kericho/Manaret/109 now LR Kericho/Manaret/S.S./600 in which the issue of fraud is being agitated.
3. The advocate for the 1<sup>st</sup> defendant was present but the plaintiff and 2<sup>nd</sup> respondent herein were absent. The suit was duly dismissed.

**II: Application dated 1.4.09**

4. The applicant request that this suit be reinstated as he was under the impression that the matter had been taken out of the list during the call over.
5. This court did peruse the court file and indeed noted that the matters were taken out of the call list.

**III: Opinion**

6. The reinstating of a suit dismissed for non-attendance is at the discretion of the court.
7. It is noted that the applicant was required to attend court on 16<sup>th</sup> March, 2009 despite that, matters would not proceed. The Plaintiff/Applicant failed to attend court. This may have been due to misunderstanding by the applicant to attend to court.
8. The application has been brought without inordinate delay. The orders dismissing suit is granted. The applicants seeking to set aside the courts order for dismissal for non-attendance is granted. There be costs to 1<sup>st</sup> defendant but not to 2nd defendant who is absent.

**DATED** this 19<sup>th</sup> day of May, 2009 at **KERICHO**

**M. ANG'AWA**

**JUDGE**

**Advocate**

P.C. Kosgey advocate instructed to hold brief by the firm of M/S Juma & Co. advocates  
for the Applicant/Plaintiff – present

H.O. Orayo advocate instructed to hold brief by the firm of M/S Nyaramba for the 1<sup>st</sup> defendant – present

N/A for the 2<sup>nd</sup> defendant