



**REPUBLIC OF KENYA**

**HIGH COURT AT ELDORET**

**MISCELLANEOUS APPLICATION 318 OF 2009**

**MARY NANJALA WACHWENGE.....APPLICANT**

**VERSUS**

**KENYA COMMERCIAL BANK LTD & ANOTHER.....DEFENDANT**

**R U L I N G**

In this application, the applicant has sought leave to appeal out of time against the judgment of the Senior Resident magistrate in SPMC No. 798 of 2000 which was delivered on 6<sup>th</sup> April, 2009 in which the applicant's suit was dismissed with costs. The application is based on the ground that the Judgment in the lower Court was delivered without notice and that the applicant's appeal has high chances of success.

The Suits which gave rise to this Suit briefly may be stated. By a Complaint dated 25<sup>th</sup> May, 2000, the applicant sued the Respondent claiming general and special damages due to an accident that allegedly occurred on 12<sup>th</sup> August, 1999 along Bungoma-Kitale Road involving motor vehicle Registration No. KAG 134 X and No. KAH 352 F as a result of head on collision and in which the applicant sustained injuries. The suit was set down for hearing on 27<sup>th</sup> July, 2000. When the matter came up for hearing, the applicant testified and she called witnesses who also testified but the investigating officer was not called to testify nor was the doctor who examined her and treated her. The police abstract which was produced in Court did not include the name of the applicant as one of the victims of the accident.

The trial Magistrate when dismissing the applicant's claim stated that the applicant had failed to establish that she was one of the victims in the accident motor vehicle as her name was not contained in the police abstract which was prepared by the Investigating Officer who visited the scene immediately after the accident and who was never called to testify.

Since there is no evidence that the applicant was in the accident motor vehicle, there is no likelihood that the applicant's intended appeal has any chance of success.

Accordingly, the applicant's application is dismissed with costs.

**DELIVERED AND DATED AT ELDORET THIS 22ND DAY OF SEPTEMBER 2009.**

**J. L. A. OSIEMO,**

**JUDGE.**