



**AWADH SALIM ABED BADAMAN.....APPLICANT**

**VERSUS**

**1. MOHAMMED ALI PYRALLI HASHAMANI**

**2. FRANK FERDINAND HALL .....RESPONDENTS**

**RULING**

The application dated 8<sup>th</sup> July 2009, is made by way of Chamber Summons under Order IXB Rules 8 of the Civil Procedure Rules and section 3A of the Civil Procedure Act seeking that the orders of dismissal of the application dated 18<sup>th</sup> June 2009 for non-appearance be set aside and the application be reinstated.

The grounds are that:

- (a) There was confusion between the advocate's clerk who took down the date for hearing the application and the advocate.
- (b) The clerk indicated that the application was listed for hearing on 8<sup>th</sup> July 2009 when he attempted to file an affidavit of service in readiness for 8<sup>th</sup> July 2009, he realized that the application was in fact listed for 7<sup>th</sup> July 2009 and the same had been dismissed due to non attendance.

The affidavit sworn by Mr. Kupalia (counsel for applicant) is a repeat of what is contained on the grounds on the face of the application.

He explained that the failure to attend court on 7-7-09 was not intentional but was occasioned by an error on the part of the clerk. He urged this court not to let the applicant suffer for a mistake not of his own making.

I think the explanation given is reasonable, no prejudice will be occasioned by setting aside the orders which dismissed application dated 18-6-09 – the applicant in fact acted with speed and filed this application by setting aside the orders of dismissal and reinstating the application dated 18-6-09 for hearing.

Parties to take mutual date in the registries.

Costs of this application shall be borne by the applicant.

Delivered and dated this 28<sup>th</sup> day of **October 2009** at Malindi.

**H. A. Omondi**

**JUDGE**