

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
OF KISII
Civil Case 166 of 2004

WILFRIDA ONDIGO AUKA

JOHN ORONI AUKA..... PLAINTIFFS

VERSUS

LUKA OWUOR DEFENDANT

RULING

The applicant filed an application under **Order XLIV rule 1** and **order XVII rule 2** of the **Civil Procedure Rules**. He prayed for review and/or setting aside of this court's judgment delivered on 23rd May, 2007. The application was made on the ground that the plaintiff was not given a chance to address the court generally on the case.

The respondent opposed the application, saying that following delivery of the judgment, he went ahead to distribute the suit land amongst his sons.

I perused the proceedings herein. The defendant closed his case on 27th November, 2006 before Bauni J. The plaintiff's advocate applied for an adjournment to enable him make submissions. The court directed him to make submissions on 18th January, 2007. On that date the court did not sit but the plaintiff's representative and the defendant went to the court registry and fixed a date for submissions – 18th April, 2007.

Come the set date for submissions and only the defendant, who was unrepresented, attended court.

By that time Bauni J had left the station and had been replaced by Gacheche J. The defendant told the court that he had already filed and served his written submissions upon the plaintiff's advocates. The same were filed on 1st February 2007. The court set the date for judgment as 16th May, 2007 but on that date the plaintiff's advocate did not attend court again. The judgment was eventually delivered on 23rd May, 2007.

In light of the foregoing, the plaintiff's advocate can only blame himself for his failure to attend court on 18th April, 2007 to make his submissions. The opportunity to do so was availed to him but he did not act appropriately. The application for review is without merit and I dismiss the same with costs to the defendant.

DATED, SIGNED and DELIVERED at KISII this 5th day of May, 2008.

D. MUSINGA

JUDGE

Delivered in open court in the presence of:

Mr. Bosire for applicant

Respondent present in person.

D. MUSINGA

JUDGE