



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Suit 445 of 2003**

CECILIA WAIRIMU NJAGI 1ST PLAINTIFF

MARGARET NJERI NJAGI..... 2ND PLAINTIFF

VERSUS

PERIS KEMUMA NYAREGA.....DEFENDANT/RESPONDENT

RULING

TO SET ASIDE DISMISSAL ORDERS

ORDER IXB R 8 CIVIL PROCEDURE RULES

I. Background

1. The plaintiff representative of the deceased one Josephat Njagi Ndiga (deceased) who died on 24 June 1996 claimed that he had been allocated a City Council of Nairobi House No. 4153 Umoja 1 Easte. A dispute on the ownership of the said house between them and one Peris Kemuma Nyarega the defendant herein.

2. On the day called out for hearing, the plaintiff 1& 2 and their advocate were absent. The defendant's advocate was also absent. The suit was dismissed for non attendance of parties on 29 April 2008 on under order IXB r 2 Civil Procedure Rules.

II Application 30 April 2008

3. The plaintiff filed an application seeking for the setting aside of the dismissal order to court. The reasons given is that the plaintiffs were in court but their advocate were absent.

4. The defendant who were not present to court stated the plaintiff have been delaying this case for 12 years and have never presented it.

5. The advocate for plaintiff claimed that he came to court after the dismissal. If he did, he never brought it to the court's attention then, that the plaintiff were in court.

III. Finding

6. The application has been brought without unordinate delay. The plaintiff claims to have had plaintiff in court but did not bring this to the courts attention

7. Advocate claims to be in court but was absent nor did he address court on 29 April 2008 nor recorded the case on file.

8. The court has discretion in setting aside dismissal orders. I would accordingly set aside the dismissal orders but at a throw away costs of Ksh.5,000/- to the defendant. The parties to proceed to pre-trial conference hearing.

DATED THIS 29TH DAY OF JULY 2008 AT NAIROBI

M.A. ANG'AWA

JUDGE

K. M. Gichachi instructed by Gichachi & Co. Advocates for the plaintiff – present

J. Omwenga instructed by J. Omwenga & Co. Advocates for the defendant