



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Suit 886 of 2002

MARY WAITHIRA MUIRURI.....PLAINTIFF

VERSUS

KURIA NG'ANG'A.....DEFENDANT

RULING

SETTING ASIDE JUDGMENT APPLICATION 31 JULY 2007

I. Background

1. The parties are in dispute over the ownership of land. The plaintiff seeks orders to evict the defendant whilst the defendant seeks orders to declare the plaintiff title was obtained by fraud.
2. On the second day fixed for hearing of this trial, the defendant and her advocate were absent. An advocate holding brief offered no evidence on their behalf.
3. Judgement was accordingly entered in favour of the plaintiff. The counter claim by the defendant was dismissed

II. 31.7.07 Application

4. By an application of 31 July 2007 the defendant prayed to set a side this judgement. This was on grounds that the advocate for the plaintiff was ill.
5. The application was opposed by the advocate for the respondent.

IV. Held/Findings

6. The defendant nor the advocate was in court. The said advocate stated she was ill. Her client should have been in court but was not. The advocate has shown this court her medical papers of her illness.
7. I would allow this application under section 3 A and not order 1XB r 8 Civil Procedure Rule as there had been an advocate present during the trial who offered no evidence.
8. I would award Ksh.5,000/- throw away costs to the plaintiff to be paid by advocate for 1st defendant.

DATED THIS 29TH DAY OF JULY 2008 AT NAIROBI.

M.A. ANG'AWA

JUDGE

S.O. Oyugi instructed by S.O. Oyugi & Co. Advocates for the plaintiff/ respondent

L.M. Njuguna & Co. Advocates for the defendant/applicant – present