



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

**Civil Case 1963 of 2007**

**GITAU KINYANJUI Alias**

**PETER GITAU KINYANJUI ..... PLAINTIFF**

**VERSUS**

**JANE WAIRIMU MAKUMI ..... DEFENDANT**

**RULING**

**TO REINSTATE SUIT DISMISSED FORNON ATTENDANCE BY PLAINTIFF TO COURT17 MARCH 2008**

**1: Background**

1. On the day set for hearing, the suit was called out and the plaintiff – herein Gitau Kinyanjui alia Peter Gitau Kinyanjui was absent.

2. The defendant was present through her advocate and did not admit any part of the claim. The suit was dismissed under Order IXB r 4 Civil Procedure Rules for non attendance to court.

3. The plaintiff then filed this present application dated the 17 March 2008 to reinstate the case for hearing.

**II: Grounds**

4. The plaintiff alleges that on the day the matter was called out he had gone to answer a call of nature as he had a running stomach.

5. This was categorically denied by one Nancy Njoki Kimani who was present at the time the case came for hearing to court. She never saw the plaintiff at all on the day in question. She was present when the case was called out outside court at 11.30 a.m. and at no time was the plaintiff present.

6. On the day the case was to be heard the advocate for the defendant was to raise issues that the case was Res judicata to the Kiambu CCMCC No.71/71 between the parties that has been heard and determined.

7. From the affidavit of Nancy Njoki Kimani, the annexures of the plaintiff applicants there seems to be several cases filed. The cases are:

Kiambu CMCC71/71

Kikuyu CMCC 98/03

Kiambu PMCC 91/05

Kiambu SPM 168/05

8. There has been non disclosure by the plaintiff/applicant of these existing cases.

9. On the plaintiff/applicants affidavit he alleges he was a minor when the property was registered under his own name as sole proprietor.

**Opinion**

10. The plaintiff/applicant has not been truthful. He was not present when this suit was called out. He never attended this court at any time.

11. I decline to reinstate this suit. The same is dismissed with costs to the respondent defendant.

DATED THIS 9<sup>TH</sup> DAY OF JULY 2008 AT NAIROBI.

**M.A. ANG'AWA**

**JUDGE**

Peter Gitau Kinyanjui plaintiff/applicant in person – present

S.N. Njenga instructed by N. Njenga & Co. Advocates for the defendant/Respondent – present.