



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**  
**Civil Case 166 of 2008**

**ISHMAEL KAGUNYI THANDE ..... PLAINTIFF**

**VERSUS**

**HOUSING FINANCE CO. LTD. .... DEFENDANT**

**R U L I N G**

Notice of motion dated 26/5/08 seeks order to set aside the order made on same day that the plaintiff's amended chamber summons application dated 13/5/08 be re-instated. The grounds relied upon are set out in the application and in the affidavit of Patrick Kahonge advocate who explains why he failed to reach the court in time on 26/5/2008. It is shown that the advocate had 2 cases in Milimani Commercial Courts, on that day arrived in the building of court at 8.55 a.m. He met N. Mungai one of the advocates, on the opposite side.

He also mentions having met Mr. Chacha Odera, Advocate. By the time he reached the court of the Hon. Justice Warsame, at around 9.29 a.m. he found that his application had already been dismissed. The plaintiff himself swears that he was in the court of Hon. Judge when his case was called and he tried to address the Judge informing him that his advocate is on the way. However this was not accepted by the Judge.

The duty of the court is to hear disputes between the parties except in the exceptional cases. In this case the reason for non-attendance is explained and it was not deliberate.

I accept the explanation given and in exercise of my discretion I allow the application. The orders made of dismissal of application are hereby set aside. The application dated 13/5/08 is hereby re-instated together with interim orders.

Costs in the cause.

**DATED** and **DELIVERED** at Nairobi this 23<sup>rd</sup> day of September 2008.

**JOYCE N. KHAMINWA**

**JUDGE**