

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
Civil Suit 173 of 2006

1. **JIMMY D. KITAO**
2. **PRICE H. ULEDI**
3. **ALBERT J. MARAFA**
4. **HENRY FARRAR MPINGAJIRA (Suing on their own**

On behalf of the other members of Anglican Church, Of Kisauni).

5. **JOASH I. MCHARO**
 6. **SARAH NYAMVULA(Suing on their own and on**
- behalf of all the Decendants of the ex-freed slaves**

of Frere Town in Mombasa)PLAINTFFS

VERSUS

RT. REV. BISHOP JULIUS R.K. KALU (Suing in his
Personal capacity and as the Bishop of the Diocese

Of Mombasa, Anglican Church of Kenya)....DEFENDANTS

COURT RULING

I have perused the affidavit of service of Alfred Ouma and I am convinced that the firm of Madzayo Mrima & Co. Advocates was served a with Hearing Notice for today (02.09.2008). The aforesaid firm received the notice under protest but that did not entitle it leave to fail to appear in court. The firm of Ambwere T.S. & Associates had filed a notice of change of Advocates dated 10.06.2008. There is no evidence that the notice was served upon the firm of Madzayo Mrima & Co. Advocates. Had the notice been served, the firm of Madzayo Mrima & Co. Advocates would have noted and indicated that it had been removed from record when it was served with the hearing notice dated 14.08.08. Mr. Ndegwa and Mr. Wanyonyi have denied having been served with a notice of change of Advocates. The failure by the firm of Ambwere T.S. & Associates to serve the notice of change of advocate upon all the parties means that the firm of Madzayo Mrima & Co. Advocates are still on record as appearing for the plaintiffs. In other words the firm of Ambwere T.S. & Associates is yet to comply with the provision of order III rule 6 of the Civil Procedure Rules. Having come to the conclusion that the firm of Madzayo Mrima & Co. Advocates is validly on record for the plaintiffs, I must consider whether or not I should dismiss this suit for want of attendance. I have already stated that the aforesaid firm of Advocates was served with a hearing notice. There is no reason why the plaintiffs and their advocates are absent from court. There is also no explanation as to why the Court Adjournment Fees has not been paid so that even if the plaintiffs were present in court, they would not have been heard unless the Court Adjournment Fees has been paid. In the end I am convinced the suit H.C.C.C. No. 173 of 2006 should be dismissed which I hereby order for want of attendance with costs to the defendant.

Dated and delivered at Mombasa this 2nd day of September 2008.

J. K. SERGON

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