



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

**Misc Crim Appli 960 of 2003**

**MARK AGOLA ABONYO .....APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**RULING**

By a Chamber Summons dated 17<sup>th</sup> January, 2006 the applicant seeks orders that the dismissal of the application dated 21<sup>st</sup> September, 2004 on 17<sup>th</sup> January, 2006 by J. Makhandia be reviewed and heard on merits and the costs of the application be provided for. The application dated 21<sup>st</sup> September, 2004 came up for hearing before J. Makhandia on the 17<sup>th</sup> January, 2006 and the applicant's counsel was called out twice, but found to be absent. The court went a head to dismiss the application.

Mr. Orenge who was seized of the matter appeared before J. Makhandia after the dismissal order had been recorded the court could not reopen it. That is what prompted this application. It is the counsels' submissions that he was before J. Nyamu for another mention and went to J. Makhandia's chambers soon after that mention. He says that the delay in appearing before that court was not deliberate and therefore his mistakes should not be visited on the client who seeks orders in the nature of declarations that his fundamental rights have been violated.

I have perused the record and I do note that Mr. Orenge appeared before J. Makhandia court about 9.16 a.m. soon after the dismissal order. Mr. Orenge has annexed to his affidavit a copy of the cause list for that day which shows the case in which he was involved. The Counsel then filed this application on 18<sup>th</sup> January, 2006 which was done without any delay. I find that the failure by Mr. Orenge to attend before J. Makhandia was not deliberate and the applicant should not be allowed to suffer because of mistakes committed by counsel. He has taken quicksteps to have the matter reinstated.

The applicant should be given his day in court and I hereby allow the application, set aside the orders made on 17<sup>th</sup> January, 2006 and order the application dated 21st September, 2004 reinstated, to be heard and determined on merit. The applicants will however bear the costs.

Dated and delivered at Nairobi this 16th day of June, 2006

**R.P.V. WENDOH**

JUDGE

Present

Ms Aulo for applicant

Ojijo CC