



**REPUBLIC OF KENYA
IN THE HIGH COURT
AT KISII**

CIVIL CASE 541 OF 1993

**JONYO OGALO
OMITI)**

**ONYANGO
OMITI)**

OKOTH OMITI) PLAINTIFFS

**AYAKO OMITI
)**

VERSUS

**FLERIA
OWANDE W/O OWITI (DECEASED)
)**

**JOTHAM OUMA
OMITI)**

**ELIAKIM
OGALO OMITI)
..... DEFENDANTS**

**AJWANG W/O
OMITI)**

RULING

The applicant seek court to reinstate his application dated

27th July 2005 which was dismissed for non-attendance. He said he was in court but he did not hear his name being called. Later he was told his application had been dismissed.

Mr. Ogutu opposed the application and said respondent was never a party and that the application was defective.

I have considered the application. The main issue is whether to reinstate the application for hearing or not. Applicant stated that he did not hear his name being called. He said he was in court. If he was in Court he should have heard his name being called. I however concede that not everyone is blessed with very good sense of hearing. I will give him benefits of doubts.

As to whether the respondent is a party or if the application is defective that can be canvassed during the proper hearing of the application.

I do note that the respondent was also not present on the day the application was to be heard.

I therefore allow the application; set aside the dismissal order of 1st December 2005 and reinstate the applicants application dated 27th July 2005. Applicant to take a suitable date for hearing.

Costs of this application in the cause.

Dated 5th October 2006

KABURU BAUNI

JUDGE

cc. Mobisa

Applicant part

Mr. Otieno for Ogutu for Respondent.