



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI**  
**H.C.C.C. NO. 264 OF 1993**

JOSPHAT WANJOHI KARITE.....PLAINTIFF/APPLICANT  
VERSUS  
CONSOLIDATED BANK OF KENYA.....DEFENDANT/RESPONDENT

**RULING**

By his application dated 31st March 2003 the Plaintiff/Applicant seeks to have the order made by the court on 22nd June 2001 dismissing his suit for want of prosecution set aside. The Plaintiff's suit was dismissed by the court on its own motion under order XVI rule 6 of the Civil Procedure Rules after the Plaintiff failed to take action to prosecute his suit from 13th June 1997 when the case came up for hearing and was marked stood over generally. The Plaintiff now blames the advocate who was previously acting for him Mr. T. T. M. Aswani for failing to take appropriate action to prosecute the suit. Although the Defendant filed grounds of opposition to the application, there was no attendance by the defence counsel during the hearing of the application which therefore proceeded ex-parte.

Given that the Plaintiff has now engaged another advocate I am prepared to give him another opportunity to prosecute his suit. I do therefore grant his application and set aside the order of dismissal made on 22nd June 2001. I further order the Plaintiff to take appropriate action in the prosecution of his suit within 3 months from the date hereof.

**Dated, signed and delivered this 18th day of March 2005.**

**H. M. OKWENGU**  
**JUDGE**