



1) *Civil Practice and Procedure*

2) *Suit Dismissed under order 16 r 6 CPR*

3) *The court reinstated suit on 20.3.98 ,Ole Keiwua,J*

4) *Held Order 16 r 6 CP require a fresh suit to be filed*

5) *Case law – Nil*

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**Civil Case 4664 of 1987**

JAMES IMBWAGA SHIYOYA .....PLAINTIFF  
VERSUS  
STEPHEN NJOROGE & OTHERS .....DEFENDANTS  
**RULING**

On the 26th of June 1996 Hon. Justice Kuloba in exercise of administrative powers given under Order 16 r 6 CPR that reads-

Hon. Kuloba J dismissed this suit. Two years later the plaintiff appeared before Ole Keiwua J (as he then was) and applied for the suit to be reinstated for hearings. This was granted by the said Hon. Judge.

The question now arises as to whether those said orders gives this court jurisdiction to proceed to hearings with this suit.

The procedure required that the said plaintiff do file a fresh suit for hearings. Thereafter the suit should have proceeded in a fresh file.

In this case the law requires a fresh suit, the discretion of dismissal having been given by Kuloba, J.

I on the other hand cannot move the orders of Ole Keiwua J unless an application to so do or appeal to the court of appeal is made.

The orders once removed would necessitate the applicant /plaintiff to apply for leave to file suit out of the required time and if allowed file a fresh suit.

The position in law is that this court has no jurisdiction to hear this matter as reinstating the same gives no jurisdiction to this court unless the Limitation of actions is complied with in a fresh suit. I dismiss this suit.

I award the costs of this suit to the defendant.

**Dated this 12th day of May, 2005 at Nairobi.**

**M.A. ANG'AWA**

**JUDGE**

Khamati Minishi & Co. Advocates for the plaintiff  
Guram & Co. Advocates & Co. for the defendant