

IN THE HIGH COURT OF KENYA
AT NYERI
HIGH COURT MISC. APPL. 180 OF 2001

JADIEL MUTHIKE NJIRU APPLICANT
VERSUS
NJAGI KITHINJI RESPONDENT

R U L I N G

Jadiel Muthike Njiri, hereinafter referred to as the applicant seeks to have his application dated 1st November 2002 reinstated. The application was dismissed on 8th May 2002 by Hon. Juma J. for non-attendance. In an affidavit sworn by the applicant's advocate, the advocate explains that he was unwell and sent his clerk to get an advocate to hold his brief and that the advocate who held his brief indicated on his file that the suit was marked S.O.G. and that he only came to realize later that the application was dismissed for non-attendance and therefore filed this application.

Although the advocate claims to have been unwell, no document has been annexed to support this contention. Further no affidavit has been availed from the clerk nor has the name of the advocate who allegedly held brief been disclosed. I find that the reasons being given for the absence of the counsel are not substantiated and therefore not satisfactory.

Accordingly I find no merit in the application and do therefore dismiss the application to reinstate the application dated 1st November 2002. Costs to the Respondent.

Dated this 27th day of July 2005

H. M. OKWENGU
JUDGE