



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**Civil Suit 635 of 1990**

**OMAR SAID .....PLAINTIFF**

**VERSUS**

**ATTORNEY GENERAL .....DEFENDANT**

**R U L I N G**

Application dated 31/7/03 seeks orders to reinstate this suit, which was dismissed on 16/4/2002 for non-appearance. Let it be noted that the application was brought before court after not less than 14 months. This is inordinate delay.

The Applicants advocate was aware that the suit was fixed for hearing on that date see par.2 of the grounds on the body of application. This case was the only one in the High Court jurisdiction. Other cases listed were in subordinate courts. See the affidavit of applicant par.5 and 6. Advocate was held up in subordinate courts until 12.30 when he advised his client to go home as the case was not listed. This was not the case.

The affidavit in reply annexed the wrong cause list before Justice Onyancha on that day. However this court record shows that the matter was listed before my court. On 16.4.02 and no appearance by the plaintiff but only the defendant. The minute for that day shows that the Court called out the case outside. The case is old (1990). It had been dismissed previously 5 years past and was reinstated. Therefore the replying affidavit has no effect as the matters are clear on the record. I see no merit in this application.

The same is dismissed with costs.

Delivered and dated at Mombasa this 29th Day of September 2005.

**J. KHAMINWA**  
**J U D G E**  
**29/9/05**

**Khaminwa, J Jason – Court Clerk**  
**Mr. Kilonzo h/b Asige**

**N/A**

**Notice issued**

**Ruling read.**

**KHAMINWA, J**

