



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**Civil Case 756 of 2002**

**ESTHER WANJIKU NJOROGE & ANOTHER ..... PLAINTIFF**

**VERSUS**

**JASWIDNER SINGH ENTERPRISES .....DEFENDANT**

**RULING**

**I: INTRODUCTION**

1. Under order 9b r 8 Civil Procedure Rules the plaintiffs/applicant seeks this court orders to set aside the dismissal orders given by this court on 5<sup>th</sup> February 2003 for non-attendance to court.
2. The plaintiffs filed suit as legal representative of one George Gache Njuguna – (now deceased) for damage for the fatal injuries sustained as result of a road traffic accident that occurred on 27 July 2001.
3. The plaintiffs were represented by the firm of M/s Mutunga Rebero and company advocates. I am made to believe that it is a sole practitioners practice.
4. On 8 October 2002 the said firm took hearing dates for the suit to be heard. This was for 5<sup>th</sup> February 2003. A call over would normally be held in the month of January 2003 confirm the dates for hearing.
5. The suit was duly confirmed for hearing. On that day the plaintiff and her advocate failed to appear to court and the suits was duly dismissed for non attendance of the plaintiff. The defendants had representation.
6. The plaintiff No.1 states that she visited her advocate office thrice. In the month of December 2002 and January 2003 and found his offices closed. She finally traced her file to his widow. On receiving the file she then had filed a notice of change of advocate through her current new advocates.
7. It transpired that her former advocate had been fatally shot and wounded with a gun. He died on the 21 December 2002 at Kenyatta National Hospital. The plaintiff were therefore unable to attend court due to this predicament.
8. I would accept this explanation and hold that the explanation given is “ a good cause and reasons” to set aside my orders dismissing this suit for non-attendance.

The costs of this application will be in the cause.

Dated this 27<sup>th</sup> day of September 2005 at Nairobi.

M.A. ANG'AWA

JUDGE

Ndumu Kimani & Co. Advocates for the plaintiff

A.W. Njogu & Co. Advocates for the defendant.