

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

Civil Appeal 30 of 1995

KIHUYU NDIRANGU APPELLANT
VERSUS
REUBEN KINYANJUI NDIRANGU RESPONDENT

RULING

This is an application to re-admit the Appeal herein which was dismissed on 9th February, 2004 for non-attendance by advocate.

The appeal was fixed for hearing by consent on 9th February, 2004. In his supporting affidavit, the Appellant's Counsel says that the Appellant's previous Advocate, Mr Charles Opolu, could not attend the hearing because he had just then been appointed a Resident Magistrate and posted to Mombasa. This fact is not controverted. The Respondent simply says that Mr Opolu's firm had indeed not been wound up, and that "the appointment of an advocate as a Magistrate does not mean that the firm ... is wound up".

That is neither here nor there. The fact is that Mr Opolu was unavailable on the day of the hearing as he had been posted to Mombasa as a Magistrate. Now, the Applicant cannot be punished for his advocate's mistake in not informing his client or the Court. It would be highly unjust to deny him the right to be heard.

Accordingly, prayer (iii) of the application dated 23rd May, 2005 is allowed. Costs to the Respondent.

Dated and delivered at Nairobi this 20th day of September, 2005.

ALNASHIR VISRAM

JUDGE