



**REPUBLIC OF KENYA**

- 1) Civil practice and procedure
- 2) Setting aside orders of the court dismissing the suit for non attendance  
Order 9b r 8 CPR.
- 3) Advocate for the plaintiff – changed
- 4) Regularized position of file of various application erroneously filed by former advocates.
- 5) Held: Application to reinstate suit allowed.
- 6) Case law – Nil
- 7) Advocates:

**N.M. Kilonzo holding brief advocate for the plaintiff**

**R.M. Munyasi advocate the defendant.**

**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO.5766 OF 1990**

**JOHN KATHURI ..... PLAINTIFF**  
**VERSUS**  
**GEDION MUNGAI KARANJA & ANOTHER ..... DEFENDANT**

**RULING**

On the 19.5.99 when this suit was called out for hearing and the plaintiff being absent was duly dismissed for non-attendance under order 9b r 4 CPR. The plaintiff then advocate was indeed professionally negligent.

- a) By chamber summons 1.12.00 he prayed to set aside the courts orders. He failed to attend

court. The same was dismissed.

b) By chamber summons 9.8.01 he filed a fresh application again to set the orders aside. This was res judicata and was struck out.

The plaintiff wisely changed advocates.

By an application chamber summons 24.3.04 the setting aside the dismissal orders was granted by consent.

The parties now come before me for the hearing of the application of 23.8.00 which is the subject matter of this ruling.

The plaintiff deponed that he blamed his former advocate for failure to attend court. The former advocate had said that the advocates handling this case had gone to Machakos for another High Court suit. That advocate was held up in another court at the said High Court of Machakos and as a result could not attend court.

The plaintiff should not be blamed for the carelessness of his former advocates. They are professionally negligent.

I hereby allow the setting aside of this court orders with costs to the defendant.

**Dated this 11th day of June 2004 at Nairobi.**

**M.A. ANG'AWA**

**JUDGE**

*N.M. Kilonzo holding brief for B. Munyasia advocate for the plaintiff*

*R.M. Munyasi advocate for the defendant*