

REPUBLIC OF KENYA

- 1) Running Down Cause
- 2) Civil Practice and Procedure
- 3) The defendants advocate on being served, process server of court indicated that the advocate was not in the country.
- 4) Before a trial proceeds for hearing, the issue of representation ought to be sorted out in this case under order 3 r 11 CPR.
Where a trial has proceeded, the proceeding is a nullity it did not afford the defendant a right to be defended.
- 5) Held in ruling the suit to restart de nova
- 6) Case law – Nil
- 7) Advocate:
Bosire holding brief for A. Otieno advocate for the plaintiff
No appearance for advocate for the defendant.

IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 166 OF 2002

JOSEPH OLANG'S ADERO PLAINTIFF
VERSUS
FRED ONYANGO NYAWARA DEFENDANT

RULING

The deceased, Alexander George Oguso a minor aged 17 years old in 2001 was alleged to have been run down by a motor vehicle as a pedestrian. The plaint filed on 31.1.02 also alleged that this was due to the defendants negligence.

On the day the suit was called out for hearing the advocate for the defendants being the owner of the vehicle the defendant himself failed to appear to court. The hearing proceeded under order 9b r 3(a) CPR.

I had not noticed that the advocate for the defendant M/s Kirui and Co. Advocate had infact moved out of Kenya. This was not brought to my attention at the time of trial. It therefore means that the defendants representation was not clear.

I hereby order that the proceeding before this court be set aside. This suit start De nova on the grounds that the defendant was not given an opportunity to be notified of this trial and for this court to deal with the issue of representation.

I further order that all the exhibits be returned to the plaintiff.

Order III r II CPR should be dealt with by the advocate for the plaintiff on the issue of representation together with information to be received from the Law Society.

Costs in the cause.

Dated this 29th day of July 2004 at Nairobi.

M.A. ANG'AWA
JUDGE

Atieno Otieno & Co. Advocates for the plaintiff
Kirui & Associates advocates for the defendant