



**1) Civil Practice and Procedure**

**2) Application to set aside orders dismissing suit for non attendance by plaintiff order 9b 8 CPR.**

**3) Reasons:**

**Plaintiff was ill with Malaria and did not appear to court.**

**Proof of medical evidence absent**

**4) Case law**

**5) Advocate:**

**S. Kimondoholding brief for Mariaria Advocate for the plaintiff**

**R. Raiji Advocate for the defendant**

**REPUBLIC OF KENYA**

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

**CIVIL CASE NO. 1570 OF 2000**

**LILIAN ANYANGO OCHIAGO ..... PLAINTIFF**

**VERSUS**

**BACHUS GROERS LIMITED ..... DEFENDANT**

**RULING**

The day the suit was called out for hearing the plaintiff was absent. The advocate through another holding his brief sort adjournment on the grounds that he was unwell. The plaintiff being absent, the suit was dismissed for non attendance. The plaintiff now brings this application to set aside the said case on the grounds she was unwell. This fact was never disclosed to the court at the day of trial. The defendants advocate objects to the application. Though I am aware that the setting aside an order is at the discretion of the court and for good cause shown, I hereby note that the plaintiff stated she was ill in her affidavit. I noted further that the medical report was missing. What was there was the medical card that does not disclose much.

The advocate has since produced in court medical report that do not confirm the said illness. I expected a letter from the doctor describing the illness and stating that the plaintiff was in attendance. I hereby dismiss this application and do award the defendants application throw away costs of this application. Dated this 29th day of July of 2004 at Nairobi.

**M.A. ANG'AWA  
JUDGE**

Osoro Mogikoyo & Co. Advocates for the plaintiff  
Riungu Raiji & Co. Advocates for the defendant

