



1) *Civil Practice and Procedure*

2) *Application to set aside the orders of the court dismissing the suit on 5.11.02 for none attendance*

3) *Reasons: -*

a) *The Plaintiff comes from a remote area of Kenya*

b) *Day of trial he fell ill and was admitted to hospital from 1.11.02 to 16.11.02.*

c) *Delay in bringing application was due to communication.*

4) *Held:*

a) *Reasons accepted despite inordinate delay, due to distant. Plaintiff lives from Nairobi.*

b) *Suit reinstated.*

IN THE HIGH COURT OF KENYA AT NAIROBI  
CIVIL CASE NO. 2068 OF 2000

HASSAN NOOR MAHMOUD.....PLAINTIFF  
VERSUS  
TAE YOUNG ANN & OTHERS ..... DEFENDANT

RULING

On the day called out for hearing of this suit on the 6.11.02 the plaintiff failed to attend court. The suit was duly dismissed for non-attendance.

The plaintiff's explanation of his absence is that he was admitted to hospital between 1.11.02 and 16.11.02. He never got in touch with his advocate thereafter nor did he make inquiries of his case till about 4 years later.

This delay is really inordinate. It is though seen that the plaintiff comes from North of Kenya ie North Eastern Province. The communication between there and Nairobi was not very good and he would send emissaries who would not pass messages to him.

The application is opposed to have his suit reinstated. The defendant has closed their files and there is nothing left in this matter.

I would call "good cause" the distant in which the plaintiff had to communicate with his lawyers. North Eastern used to be remote, though it no longer is such.

I would allow this application and reinstate the suit with costs to the plaintiff assessed at throw away costs of Ksh.5,000/-.

This suit be set down for hearing after payment of the costs to the defendant and pre trial issue settled.

**Dated this 24th day of November, 2004 at Nairobi.**

**M.A. Ang'awa**

**Judge**

Chaundhri & Associates Co. Advocates for the plaintiff

Riunga Raiji & Co. Advocates for the defendant