



REPUBLIC OF KENYA

- 1) Civil Practice & Procedure
  - 2) Application setting aside
- Dismissal orders for non attendance

3) Reasons:-

- i) Had a motor vehicle breakdown along Kiambu road

4) Held:-

- i) Explanation accepted
- ii) Suit reinstated for hearing

5) Case law

Maina v Muriuki

CC 1079/80 14th March, 1984

6) Advocates

N. Kibatia advocate for the plaintiff

S.M. Ambuga advocate for the defendant

IN THE HIGH COURT OF KENYA AT NARIOBI  
CIVIL CASE NO. 1038 OF 2001

KINOS THE HARIE NDUN G'U ..... PLAINTIFF  
VERSUS  
MICHAEL MBURU KARIUKI ..... DEFENDANT

RULING

It was on the 9th of July 2002 when this suit was called out and the plaintiff was absent. The defendant was present. The suit was dismissed for non-attendance.

The plaintiff engaged a new advocate who filed this present application. The reason for there being the non-attendance to court by the plaintiff was that he had a break down on the vehicle he and his witness were travelling in. He was not able to attend court due to this. The advocate relied on the case law of:-

Maina v Muriuki  
(1984) KLR 40 7

In which he emphasized that its the courts discretion to allow the setting aside of a dismissal order. The application was opposed.

I find herein that the explanation of a vehicle break down is duly accepted.

I hereby under the discretion that this suit be reinstated with costs to the defendants at throw away costs of Ksh.5,000/-.

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

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

Kibatia & Co. Advocates for the plaintiff  
Moronge & Co. Advocates for the defendant