



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
CIVIL CASE 144 OF 2000

JOSEPH KAHUTHU & ANOTHER ..... PLAINTIFF  
VERSUS  
HYDRA DRILLING (K) LTD & ANOTHER .....DEFENDANT

RULING

On the day fixed for hearing of this suit both the plaintiff and the advocate for the plaintiff were absent. The defendant not admitting any part of the claim sort for the suit to be dismissed under order 9b r4 CPR. A year later the plaintiff files this current application for setting application for setting aside this courts orders for non-attendance.

The reasons given is that the advocate was under the impression the matter had not been confirmed during the call over. The time that he knew of the dismissal of the suit is when a new date for hearing was being sort. The mistake appears to be entirely his ie that of the advocate for the plaintiff.

The grounds opposing this application were filed out of time and rejected. Under order 9b r 8 CPR an application for setting aside dismissal orders can be set aside but if such dismissal is made under order 9b r 4 CPR there must be “good cause”.

In this case the advocate for the plaintiff started the mistake was his. The good cause being that he made a mistake.

I would accept this explanation but rule that there throw away costs of Ksh.5000/- personally by advocate be awarded to the defendant. The plaintiff is to fix this suit for hearing after pretrial issues are dealt with.

Dated this 7th day of December 2004 at Nairobi.

**M.A. ANG’AWA**

**JUDGE**

Nyakundi & Co. Advocates for the plaintiff  
Shapley Barret & Co. Advocates for the defendant