



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Winding Up Cause 4 of 1990**

**Kabue v Sanitam Services (EA) Limited v In the Matter of Companies Act**

**Ruling.**

This is an application brought pursuant to the provisions of 0.1XB rule 8 Civil Procedure Rules. The applicant is the petitioner in the cause.

The applicant seeks an order vacating the dismissal order which was made on 31<sup>st</sup> January, 1991 because of his non-attendance. The cause had been fixed to come for hearing on that date. The date was taken ex-parte. A hearing notice was later served on the respondent's advocates on record. At the request of the respondent's counsel the cause was dismissed.

Mr munene, counsel on record for the applicant now states that he attended court in touch with my court clerk and informed him that he would return later. He had another matter before the Hon Mr Justice Tank. So he went to deal with it first. Upon his return at some minutes after 9.30 a.m. he learnt that his cause had been dismissed. He contents, that the dismissal will be oppressive to his client if not set aside, because he says his client was present, but outside the court. Secondly that he had notified the court clerk that he would return soon, which he says he did.

Mr Mutiso for the respondent opposed the application. He denied Mr Munene was anywhere inside or outside Chamber 14 where the matter was listed to come for hearing. In addition it is stated in a replying affidavit that the applicant's application lacks bona fides.

This application must fail. The power to set aside is discretionary. The discretion is a judicial one and must be exercised on the basis of facts and legal principles. Mr Munene has not satisfactorily explained his absence. Had he been punctual he would have, as is normally the practice of this court, mentioned his matter and requested that it be put aside until a later time. He did not attend me at 9 a.m. when I normally mention matters which are either being adjourned or those in which parties are not ready to proceed immediately.

There is also one other fact. The applicant has been said to have disobeyed certain orders made by this court. That amounts to a contempt of court. The applicant cannot expect to be granted indulgence by a court he does not respect. He did not come to court with clean hands. He does not therefore qualify to receive equity. The application is dismissed with costs. Orders accordingly.

**February 2, 1991**

**Bosire, J**