



**REPUBLIC OF KENYA**

**IN THE COURT OF APPEAL OF KENYA**

**AT ELDORET**

**CIVIL CASE 2810 OF 1996**

**KENYA PLANTERS CO-OPERATIVE UNION LIMITED.....PLAINTIFF  
APPLICANT**

**-versus-**

**JOSEPH KAHIGA KIHUNGI.....DEFENDANT RESPONDENT**

**R U L I N G**

In the Notice of Motion dated 4<sup>th</sup> July 2006, the Applicant Plaintiff prays that the exparte order of the court given on 22<sup>nd</sup> June 2006 dismissing the Plaintiff's application dated 23<sup>rd</sup> March 1998 for non attendance be set aside.

The Defendant opposes the application.

The Application was dismissed for non attendance the Applicant's Counsel having fixed the hearing date and having served the Defendant's Counsel with a hearing notice. Following that, the Defendant's Counsel attended Court while the Plaintiff's Applicant's Counsel failed to attend court and the court dismissed the application for non attendance.

Now the non attending Counsel is telling this court that he failed to attend court on 22<sup>nd</sup> June 2006 because he was before another Judge in another case and had forgotten that he also had this case to attend to although it was in his diary.

A good reason and I would have sympathised with him, but I do note that although that application was not dismissed for want of prosecution, the learned Judge, Lady Justice Mugo, also remarked as follows: -

***“The court observes that the applicant appears not interested in prosecuting this long outstanding application.”***

That was in respect of an application dated 23<sup>rd</sup> March 1998 not prosecuted up to 22<sup>nd</sup> June 2006 when it was dismissed for non attendance.

In those circumstances, I would not sympathise with the Applicant. Let him fall back to the main suit he has not been prosecuting using these applications, his applications, as excuses, bad excuses of course.

Accordingly, this Notice of Motion dated 4<sup>th</sup> July 2006 be and is hereby dismissed with costs to the Respondent.

Dated this 5<sup>th</sup> day of June 2009.

**J. M. KHAMONI**

**JUDGE**