

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
CORAM: KWACH, J.A. (IN CHAMBERS)
CIVIL APPLICATION NO. NAI. 236 OF 1998
BETWEEN

BENSON NGUGI MUIRURI APPLICANT
AND
KENYA NATIONAL CAPITAL CORPORATION RESPONDENT

**(Appeal from a Judgment of the High Court of Kenya at
Nairobi (Hon. Justice Ole Keiwua) dated 10th February
1998
in
H.C.C.C. NO. 1981 OF 1993)**

R U L I N G

This is an application for reinstatement of the application which I dismissed on 21st April, 1999 for non attendance. For some reason the application was listed before two Judges of Appeal namely Kwach and Owuor JJA. But this cannot justify the decision by Mr Khaminwa to send his clerk to Court knowing fully well that a clerk could not possibly deal with the matter on his behalf. Mr Khaminwa has not explained why he was not in Court when the matter was called. He may have been engaged elsewhere, I do not know.

This is a very borderline case and I am prepared to give Mr Khaminwa the benefit of doubt, but on terms Accordingly, I allow the application, set aside my order dated 21st April 1999 and reinstate the Motion. The applicant will pay the respondent=s costs assessed at *Shs 10,000/ - within 10 days* , and in default this application to stand dismissed with costs without any further order.

Dated and delivered at Nairobi this 19th day of January, 2000.

R. O. KWACH

JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR