



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISII**

**Civil Suit 71'B' of 2008**

**IBRAHIM SALIM KIPRASU.....PLAINTIFF**

**VERSUS**

**IGNATIUS CHEGE MWANGI.....DEFENDANT**

**RULING**

The plaintiff's application dated 24<sup>th</sup> March, 2010 seeks setting aside of this court's orders made on 28<sup>th</sup> September, 2009 when his suit was dismissed for want of prosecution. On that day, the plaintiff's former advocate, Mr. Ondari, sought an adjournment saying that he had been informed that his client was out of the country. The advocate had been served with a hearing notice on 4<sup>th</sup> December, 2008. the application was opposed by the defendant's advocate, Mrs. Asati. The court declined to grant an adjournment.

Mr. Ondari told the court that he had telephoned the plaintiff's brother and he was going to attend court and testify as a witness. For that reason, the hearing was scheduled to start at noon. Come that time the intended witness was not in court. Mr. Ondari sought to withdraw the suit but the defendant's advocate urged the court to dismiss the suit for want of prosecution which was done.

In his affidavit in support of the application, the plaintiff stated that he was not aware of the hearing date, having not been so notified by his former advocate. His brother who was telephoned by Mr. Ondari on the material day was at Kichwa Tembo, about 90 kilometres from Kilgoris Town and was unable to get to court in good time. He also tried to call the plaintiff without any success.

Mr. Mokua advocate was granted leave to come on record in place of Mr. Ondari on 24<sup>th</sup> February, 2010.

This is a land matter and it is in the interest of the parties that the case be determined on its merits. For that reason alone, I set aside this court's orders made on 28<sup>th</sup> September, 2009 dismissing the plaintiff's suit for want of prosecution. The plaintiff shall however pay the thrown away costs of the suit before the suit can be set down for hearing.

**DATED, SIGNED AND DELIVERED AT KISII THIS 6<sup>TH</sup> DAY OF JULY, 2010.**

**D. MUSINGA**

**JUDGE.**  
**6/7/2010**

Before D. Musinga, J.

Mobisa – cc

Mrs. Asati for the Defendant

Mr. Otieno HB Mr. Mokua for the Plaintiff/Applicant

**Court:** Ruling delivered in open court on 6<sup>th</sup> July, 2010.

**D. MUSINGA**

JUDGE.