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- 1) Civil Law suit
- 2) Professional negligence by advocates of the High Court of Kenya
- 3) Negligence - in summary
 - a) Failure to attend court
 - b) Failure to file submissions
 - c) Failure to call evidence and witnesses
 - d) Failure to advise adequately on the chances of success
- a) Claim:
 - a) Judgment decree of court 1,032,358/-
 - b) Auctioneers fee 50,000/-
 - c) Costs of review setting aside 9,525/-
 - d) New advocate fee 75,000/-

Ksh. 1,100,883/00
- 5) Hearing order 2b r 3 (a) CPR non attendance by defendant
- 6) Held: The advocate is immunised from being sued in negligence (but this is in certain cases which does not amount to solicitors work)
- 7) Statute Law
 - a) The Advocates Act Cap. 16 Laws of Kenya
- 8) Case Law by plaintiff:
 - a) Eolamu vs Friern Hospital Management Committee (1957) 2 ALL ER 118
- 9) Text book law and courts case law
 - a) Charlesworth and Percy on negligence 8th Edition by R.A. Percy, M.A. (Oxon)
 - b) Rondel v Worsley 1969 IAC 191
 - c) Sief Ali v Sydeney Mitchell & Co. (1980) AC 198
 - d) Somasundaram v M. Julius Melchior & Co. (a firm) 1968 WLR 1394
 - e) Fell v Brown (1791) 1 Peake 131
- 10) Advocates:
 - K.K. Nyaencha advocate for the plaintiff - present
 - No appearance advocate for the defendant - absent

REPUBLIC OF KENYA
 IN THE HIGH COURT OF KENYA AT NAIROBI
 CIVIL CASE 431 OF 2002

APOLLO INSURANCE CO. LTD. PLAINTIFF

VERSUS

FLAVIA RODRIGUES DEFENDANT
 Ta M/S FLAVIA RODRIGUES & CO. ADVOCATES

JUDGMENT

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On the 18.2.02 the parties took dates for hearing of this suit by consent to be heard on 24th and 25th June 2003. On the said day fixed for hearing, the suit was called out. The advocate for the plaintiff came late. The advocate for the defendant did not appear at all despite the court waiting for her. The proceeding proceeded the following day under order 9b r 3(a) CPR; namely that the court was satisfied that the defendant had notice of the hearing date but had failed to appear, the hearing is permitted to proceed ex parte.

A: Background of the case.

Flavia Rodrigues

T/a M/s Flavia Rodrigues and Co. Advocates

has been sued for Professional negligence by her then instructing client M/s Appollos Insurance co. Ltd.

Appollos Insurance Co. Ltd insured the client M/s Car and General Automotive Limited's motor vehicle registration KUQ 553 Mazda Saloon. The vehicle was being driven by one John Nyarangi Rasugu (now deceased) an employee of Car and General (Automotive) Limited on the 13th day of October, 1993. Whilst driving along the Kitale/Webuye road, the vehicle had a tyre