



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**CIVIL APPEAL NO. 189 OF 2008**

**LEVI OMONDI AMEKA.....APPELLANT**

**VERSUS**

**SOUTHERN CREDIT BANKING CORPORATION LTD.....RESPONDENT**

**RULING**

1. A notice to show cause why this appeal should not be dismissed was issued in this appeal under Order 42 Rule of the Civil Procedure Rules. This court, Kiarie Waweru J., then on 18<sup>th</sup> June, 2015 dismissed this appeal when no appearance was entered on behalf of the Appellant.
2. The Appellant has now filed a notice of motion dated 22<sup>nd</sup> June, 2015 seeking to set aside the orders of 18<sup>th</sup> June, 2015 and that this appeal be reinstated and the same be heard and determined on merit. The application is premised on the grounds on the face of the application and the Supporting Affidavit of Kenneth Wilson who is an advocate having conduct of this matter. The reasons advanced for this application is that on the material day, the said advocate has a matter, ELC No. 492 of 2015 before Hon. Mutungi J., and sought an advocate to hold his brief. That belatedly and due to a mix up as to where the appeals would be heard, he arrived in court on or about 9.15 a.m. He sought clarification and was informed by a court clerk that the matter had not been called out and that appeals would be mentioned in chambers. That he was later informed that the matter had been dismissed for non-attendance. He stated that he is apprehensive that the dismissal was inadvertently done because the judge was unaware of his presence. He further stated that he had sworn an affidavit why the subject appeal should not be dismissed.
3. I have given due consideration to the application and the dispositions therein, it is alleged that some advocate was assigned to hold brief for the advocate on record. It is also deponed that the advocate came to court late at 9.15 a.m.,. The reasons may not seem to add up. Since however the application was not contested and for the reason that the same was made timeously, I am inclined to grant the Appellant an opportunity of having his appeal heard on merit. By virtue of Section 1A and Article 159 (2)[d] of the Constitution, I allow the application as prayed. Costs to abide the appeal.

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**A. MABEYA**

**JUDGE**

**Dated, Signed and Delivered at Nairobi this 21<sup>st</sup> day of September, 2015.**

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**JUDGE**