



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO.56 OF 1999**

CECILIA WANJA WAWERU.....APPELLANT

**VERSUS**

JACKSON WAINAINA MUIRURI)

LUCY NDUTA RIUNGO ).....RESPONDENTS

**RULING**

The appeal herein was filed on 18/6/1999. The same was admitted on 21/3/2000. Justice Makhandia dismissed the same on 13/2/2009 for want of prosecution, approximately 10 years after the appellant failing to take any action. The appellant filed the application for reinstatement on the 13/5/2013 approximately 4 years after dismissal. The court finds that there is inordinate delay as argued by Mr. Njoroge. The explanation for the delay by Mr. Wandaka that the applicants/appellants were not aware of the dismissal until the 2/4/2013 is sound however, the applicant again took more than one month to file the application for reinstatement even after becoming aware of the dismissal.

This court finds that there are good reasons given by the applicants for the delay in filing the application for reinstatement upto the 2nd of April 2013. Moreover failure by the court through the registrar to notify the appellant of the intention to dismiss the appeal for want of prosecution was a breach of the rights of the appellant to fair trial. However, the issue to be determined by the court is whether a delay of one month to commence the process of reviewing of the decision of justice Makhandia and therefore reinstating the appeal was inordinate.

Applications of this nature are supposed to be filed within reasonable time. Bearing in mind that an appeal from the lower court to the High Court should be filed within 30 days from the decision of the court, this court believes that a delay of more than 40 days to file the application to reinstate the dismissed appeal is inordinate and equity assists the vigilant not the indolent. After realizing that the appeal had been dismissed for want of prosecution, the appellant should have moved to court expeditiously within reasonable time. A delay of 40 days is inordinate and inexcusable and therefore the application is dismissed with costs.

**Dated, signed and delivered on 30th day of October 2013.**

**A. O. OMBWAYO**

**JUDGE**