

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL APPEAL 135 OF 2003

RODAH KOBILO CHEBON APPELLANT

VERSUS

SUSAN ABOKE ONSOMU RESPONDENT

RULING

On 6/7/2005 Mr. Karanja argued the respondent's application dated 24/1/2005. According to an affidavit of service filed by the respondent's counsel on 20th April, 2005, the said application was on the 11th April, 2005 served upon M/s Cherono & Company Advocates for and on behalf of the appellant. The said advocates did not file any documents in opposition to the said application and neither did they attend court. The said application was therefore unopposed. The application was therefore unopposed. The application sought dismissal of the appeal herein for want of prosecution or in the alternative, striking out of the same as being an abuse of the process of the court.

The ruling of the said application was scheduled to be delivered on 28/7/2005. However, as I went through the file in the course of preparing the ruling, I realized that the appellant's advocates who were on record were O.P. Ngoge & Associates Advocates of P.O. Box 3430- 00200 Nairobi not Cherono & Company who had been served with the said application. The record of appeal that was filed on 14/4/2005 was drawn and filed by O.P. Ngoge & Associates. This firm of Advocates filed a notice of Change of Advocates on 21st December, 2004 and replaced M/s Kamonjo Kiburi & Company Advocates who were previously on record for the appellant. Cherono & Company Advocates seems to have filed Grounds of Opposition and list of authorities to the respondents earlier application dated 10th June, 2003 but which was withdrawn on 27th July, 2004. The file does not show whether Cherono & Company Advocates had initially filed notice of appointment of Advocates because M/s Kamonjo Kiburi & Co. Advocates were the ones who were on record for the appellant until M/s O.P. Ngoge & Associates filed the notice of change of Advocates as aforesaid.

In the circumstances, the respondent's application dated 24/1/2005 was served upon M/s Cherono & Company Advocates by mistake and should have been served upon M/s O.P. Ngoge & Associates. I will therefore stand it over generally and direct that a hearing date for it be fixed in the registry.

DATED, SIGNED & DELIVERED at Nakuru this 28th day of July, 2005.

D. MUSINGA

JUDGE

28/7/2005