



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU**

Civil Appeal 59 of 2002

**FRANCIS MUCHAI GAKUNGI.....
.....APPELLANT**

VERSUS

**JOYCE WACUKA.....1ST
RESPONDENT**

**ALOISE GITHAU.....2ND
RESPONDENT**

**MARIKO NGUNJU.....3RD
RESPONDENT**

**MUKUNGO NJOKA.....4TH
RESPONDENT**

**JOSEPH KARIRU(for and on behalf of Munyaka tea Buying Centre members)..5TH
RESPONDENT**

RULING

Application dated 26/7/2005 was made by the five Respondents in this appeal. The orders sought was that the appeal be dismissed for want of prosecution. The appeal was filed on 17/12/2002 and directions give on 8/10/2003 and yet the appeal has never been set down for hearing. The applicant's hold Judgment in the lower court suit against the Appellant. And for the period from 8/10/2003 to the 27/7/2005 no action has been taken to set down the appeal for hearing. The Respondent/Appellant has given reasons why his appeal has not been set down for hearing citing several personal incidents of misfortune that had befallen him since the filing of the appeal and up to April 2006 he was bedridden walking with clutches Appellants advocates M/s Wairimu Mubari has also filed a Replying Affidavit in addition to that of her client. She swore that the Appellant came to her office on 19.5.2006 almost one year since the filing of this application. However the application was set down for hearing on 29/5/2006. But due to failure of the Counsel the application was dismissed. Let it be noted that the said dismissal was set aside before this application was argued. The Appellant in this application has exhibited several documents to prove the fact of the illness of his late wife. It is clear that the Appellant was very distressed during the period of the illness of his wife and her subsequent demise. There is also medical evidence that the Appellant was suffering illness. This also must have occasioned heavy expenses. The Judgment against the Appellant is Shs.440,000/= and this is a large sum of money. The Appellant could

not have ignored to prosecute appeal at all.

Upon considering arguments by both counsel it is clear that there has been much delay in prosecuting this appeal. However I find the appellant was confronted by other extraordinary problems which cannot be ignored in considering the delay complained of. I therefore accept the reasons given for delay. I dismiss the application but grant all costs occasioned to the Applicant/Respondents. The appellant shall set down the appeal for hearing within the next 30 days from today.

Dated this 16th January, 2008.

J. N. KHAMINWA

JUDGE

16/1/2008

Khaminwa – Judge

Njue – Clerk

Mr. Kathungu for Wairimu

Read in open court.

J. N. KHAMINWA

JUDGE