



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT**  
**CIVIL APPEAL 43 OF 2003**

**JULIANA WAWIRA NYAMU.....APPELLANT**

*Versus*

**SUSANA WAGUAMA MUCIGA.....RESPONDENT**

**RULING**

The appeal herein was admitted on 25<sup>th</sup> May 2004. On 8<sup>th</sup> December 2004 the Respondent took a date for the hearing of her application for dismissal of that appeal for want of prosecution. The application was heard and then a ruling was delivered on 13<sup>th</sup> July 2005. The court in that ruling excused the appellant for the apparent delay in fixing the appeal for hearing on the basis amongst others that the Appellant's advocate had been struck off the roll of advocates without the knowledge of the appellant. Hence the delay in fixing the appeal for hearing. The court therefore struck off the application. The record subsequently thereafter shows that the Respondent has keenly followed this matter and has twice fixed the appeal for hearing in the absence of the Appellant but unfortunately the two times that the matter was fixed for hearing the court does not seem to have sat to hear the matter. The Respondent it does seem as a result of that frustration, has again filed the application by way of Notice of Motion dated 23<sup>rd</sup> February 2007 again seeking for the dismissal of the appeal for want of prosecution.

In listening to the submissions of the Respondent who appears in person and counsel for the Appellant it becomes clear that although the delay hereof in hearing the appeal cannot be blamed on the Appellant the Respondent has been very industrious in attempting to have this appeal heard. Her anxiety to have this matter concluded was clear when she submitted in favour of her present application and stated "***I request the court to give me the land. My children are suffering.***" It is obvious that the Respondent is desirous of this appeal being heard and the matter determined as soon as possible. In view of that the court is of the view that the present application ought to be struck out because the Appellant cannot be blamed for the failure of the court in hearing the appeal. But in the interest of justice the court does hereby order that this appeal be heard by this court on the 28<sup>th</sup> of May 2007. There shall be no orders as to costs in respect of the Notice of Motion dated 23<sup>rd</sup> February this year.

***Dated and delivered at Nyeri this 18<sup>th</sup> day of May 2007.***

MARY KASANGO

JUDGE