

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI

Civil Appeal 104 of 2002

ALICE WANJIKU GITHAKA.....APPELLANT/APPLICANT

Versus

PETER MWAI MIGWI.....RESPONDENT/APPLICANT

RULING

The application before court is a Chamber Summons dated 18th October 2006.

The same is brought under order XL1 Rule 31 (1) of the Civil Procedure Rules. It prays for an order that the appeal hearing be dismissed for want of prosecution. The application was served on appellant but on the day of hearing the appellant did not appear in court nor did she file any grounds of opposition. The applicant stated that direction for the hearing of appeal were given by the court on 7th February 2003. The matter was then fixed for hearing on 17th November 2003. The same could not be reached and it was adjourned generally. The applicant further deponed that the appellant has since then not taken a hearing date for the appeal. That it has been now two years since the matter was last adjourned. The deponent therefore concluded that the appellant has lost interest in her appeal. The applicant therefore seeks that the appeal be dismissed under order XLI Rule 31 (1) of the Civil Procedure Rule. That Rule provides as follows:-

(1) Unless within three months after the giving of directions under rule 8b the appeal shall have been set down for hearing by the appellant, the respondent shall be at liberty either to set down the appeal for hearing or to apply by summons for its dismissal for want of prosecution.

It is clear that the application does in deed fit in with that rule. The appellant has failed to fix the appeal for more than 3 months and failed to give any explanation for such failure. Accordingly the application is merited and is granted as prayed. The appeal is hereby dismissed for want of prosecution with costs to the respondent. The respondent is also granted costs of the Chamber Summons dated 18th of October 2006.

Dated and delivered at Nyeri 11th of May 2007.

MARY KASANGO

JUDGE