

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

Civil Appeal 94 of 2002

RETURNING OFFICER KIHARU CONSTITUENCY...APPELLANT

Versus

ESTHER WANJIRU GITHINJI.....RESPONDENT

(Being an application for dismissal of appeal for want of prosecution arising out of an appeal from the Ruling by Abdul El-Kindiy, Principal Magistrate Muranga, in Misc. Application No. 2 of 1998 dated 13th May 2002 at Muranga.)

RULING

A Notice of Motion is filed by the Respondent in the appeal brought under *Order XLI Rule 31* of the Civil Procedure Rules. The application seeks the dismissal of the appeal for want of prosecution. The uncontroverted background of this matter is that this appeal was served on the Respondent on the 17th July 2002. The Appellant subsequently applied for directions and the same was listed for hearing on 20th August 2003. It is also undisputed that on that day the court was not sitting and accordingly directions were not given. The Appellant thereafter did not fix this matter for hearing and no further action was taken herein until the present application was filed by the Respondent which is dated the 27th October 2004. The Appellant despite the filing of that application was not moved to expedite the hearing of the appeal and indeed no action was taken by the Appellant.

In considering this application and considering all the surrounding circumstances, I find that the Respondent's application is merited. There is no sufficient reason shown by the Appellant why the orders that are sought should not be granted. Accordingly, the orders of this court are as follows:

1. The appeal herein is hereby dismissed for want of prosecution.
2. The costs of the appeal and the costs of the Notice of Motion dated 27th October 2004 are hereby granted to the Respondent in the appeal.

Orders accordingly.

Dated and delivered at Nyeri this 8th day of June 2007.

MARY KASANGO

JUDGE