



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

**Civil Appeal 10 of 2000**

**WANJAU MWANGI.....APPELLANT**

*Versus*

**FLORA WANJIKU.....RESPONDENT**

*(Being appeal against the judgment delivered on 17<sup>th</sup> November 1999 in Civil Case Number 47 of 1993 Kangema by Abdul El Kindly Senior Resident Magistrate)*

**RULING**

The present application is by Notice of Motion dated 26<sup>th</sup> June 2007. It seeks a prayer that this court be pleased to re-admit this appeal for hearing. On 17<sup>th</sup> May 2007 when the appeal came up for hearing, the Appellant' counsel being absent, the appeal was dismissed for non attendance. The Appellant states that he was in court on the material day but did not know what to do when the matter was called out. On the appeal being dismissed he attended to his then advocate's office and those advocates later refused to continue to represent him in this matter. He therefore seeks that the appeal be re-admitted. The Respondent in the appeal opposes the application. She states that she is in possession of **LOC. 19/NYAKIANGA/1857** which is curved out of the suit property. That the Appellant took 45 days from the dismissal to file the present application.

I have considered the Appellant's application and the Respondent's opposition and the arguments of counsel. By making the present application the Appellant seeks this court to exercise its discretion in his favour. When the Court is called upon to exercise its discretion it is worthwhile to remember the words of the case of **PATEL V E.A. CARGO HANDLING SERVICES [1974] E.A. 75 at pg 76** where Sir William Duffus P said:

***“The main concern of the court is to do justice to the parties, and a court will not impose conditions on itself to fetter the wide discretion given it by the rules”.***

Accordingly I find that the justice of this case is best served by granting the order sought. Accordingly the order of this court is that the dismissal of this appeal of 17<sup>th</sup> May 2007 be and is hereby set aside and the appeal is re-admitted for hearing. The costs of the Notice of Motion dated 26<sup>th</sup> June 2007 are awarded to the Respondent.

**MARY KASANGO**

**JUDGE**

***Dated and delivered at Nyeri this 14<sup>th</sup> day of November 2007.***

**By: M. S. A. MAKHANDIA**

**JUDGE**