



**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**

**CIVIL APPEAL NO 169 OF 1995**

**ESTHER WAITHIRA KARIUKI ..... APPELLANT**  
**VERSUS**  
**SAMUEL MUHARI GATHECHA ..... RESPONDENT**

**RULING**

This is an application for the dismissal of this appeal for want of prosecution.

The appeal was filed in May 1995, and was dismissed for want of prosecution in February 2002. It was reinstated on July 3, 2003, and again one year having elapsed, the Appellant has taken no steps to prosecute the appeal. His excuse for not taking any steps is that the lower court file was missing. There is no such evidence exhibited, and there is no good reason shown why this Court should once again, for a second time, allow the Appellant prosecute his appeal. In any event, as the Respondent has deponed, this appeal has been overtaken by events. The lower court's Judgment had already been executed before the appeal was reinstated last year.

This litigation must now end. The application dated 7th day of April, 2004 is allowed and this appeal is dismissed for want of prosecution with costs to the Applicant/Respondent.

**Dated and delivered at Nairobi this 13th day of July, 2004.**

**ALNASHIR VISRAM**  
**JUDGE**