

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO 253 OF 2002

STEPHEN KIIRU MUTUVA APPELLANT

VERSUS

JANE WAITHERA MUNGAI RESPONDENT

RULING

This is an application to set aside this Court's previous order dismissing the appeal for want of prosecution. The applicant claims that the application dated 5th May, 2003 for dismissal of the suit for want of prosecution was never actually served on his Counsel, and the Advocate who allegedly appeared before the Court at the hearing of the aforesaid application, had no authority to do so.

These facts have not been controverted. There is no replying affidavit filed. There is no proof in the court file that the applicant had been served with the previous application giving rise to the order for dismissal of the suit.

Accordingly, the interests of justice demand that I set aside this court's orders issued on 1st July, 2003 dismissing this appeal for want of prosecution. Costs shall be in cause.

Dated and delivered at Nairobi this 8th December, 2004.

ALNASHIR VISRAM

JUDGE