



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO. 2 OF 1999**

**ELIUD NYAGA NAMU ..... PLAINTIFF**

**VERSUS**

**IRERI MWARANIA ..... DEFENDANT**

**RULING**

By an application dated 4th June 2002, the Applicant applied to this court to reinstate the appeal that was dismissed on 30th October 2000 for non-attendance. The application was supported by the affidavit of the Applicant in which he deponed that his then advocate on record was not served with the hearing notice and as such he and his advocate did not attend court on 30th October 2000 when his appeal was dismissed for nonattendance.

He however deponed that he went to the Registry and that is when he discovered that his appeal had been dismissed. He then instructed his present advocate to file the present application.

I take judicial notice that the High Court sits in Embu once a month and all the advocates are expected to check on the Cause List what cases are fixed for that week when the judge sits in Embu. For this reason alone, any conscientious advocate ought to have looked at the Cause List and known whether any of his cases have been listed for hearing. The appeal was dismissed on 30th October, 2000 and the Applicant conveniently failed to specify in his affidavit when he learnt that his appeal had been dismissed.

This application was filed in June 2002 over one and half years since the appeal was dismissed. The Applicant's previous advocate has not filed any affidavit to support the allegation that he was not served with the hearing notice. Indeed the Applicant depones that service was by registered post.

He does not also depone as to when he instructed his advocate to file this application. He has been uneconomical with the information. I am satisfied that this is not a proper case to grant the application sought and the same is dismissed with costs.

**Dated this .....day of .....2003.**

**J.V.O. JUMA**

**JUDGE**