



**Kamau v Kareithi (Appeal E417 of 2023) [2025] KEHC 9599 (KLR) (23 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9599 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
APPEAL E417 OF 2023  
DO CHEPKWONY, J  
JUNE 23, 2025**

**BETWEEN**

**JOHN KARANJA KAMAU ..... APPELLANT**

**AND**

**PETER NJUGUNA KAREITHI ..... RESPONDENT**

*(Being appeal from a Judgment/Decree delivered on 13th October, 2023 before Hon. J. Orwa, SRM in Kikuyu Senior Principal Magistrate's Court vide CMCC No.270 of 2021)*

**RULING**

1. This matter is scheduled for interparties hearing of a Notice of Motion application dated 6<sup>th</sup> February, 2025 in which the Applicant/Respondent is seeking dismissal of this appeal for want of prosecution. Counsel for the Respondent had indicated that the application and hearing Notice were served upon the Appellant's counsel on 20<sup>th</sup> June, 2025 and an Affidavit of Service filed on 23<sup>rd</sup> June, 2025.
2. According to the Respondent/Applicant's counsel, despite serving the Appellant/Respondent with the said application, there has been no response filed by them and neither have they attended court today. The Respondent's/Applicant's counsel has then sought to have their application allowed and the appeal dismissed for want of prosecution .
3. I have checked the Court Tracking System (CTS) and find that indeed the Appellant/Respondent has not filed a response to the application. however, from the same System, there is no Affidavit of Service to confirm the alleged service. What is shown as having been uploaded on 23<sup>rd</sup> June, 2025 at 13.04 is an error message of 'Failure to load PDF Account' where the counsel cannot access to ascertain the nature of the said document.
4. In view of this, the Court finds that there is no proof of service upon the Appellant/Respondent and hence cannot grant the orders sought.



5. Also, the Respondent/Applicant has stated that they served the Appellant/ Respondent with the application and hearing which was coming up today. Clearly, this is the third day from the date the Appellant/Respondent was allegedly served. From the court record the court issued directions for the Appellant/Respondent to be served with the application within three (3) days from 10<sup>th</sup> June, 2025 for the Applicant to file and serve their response before attending court for hearing today.
6. It is clear that the Applicant/Respondent did not comply with the timelines provided by this Court with regard to the application dated 6<sup>th</sup> February, 2025 and thus has not allowed the Appellant/ Respondent sufficient time to file a response, if at all.
7. Be that as it may, the Court finds that the alleged service upon the Appellant/Respondent has not been demonstrated by any evidence and proceeds to direct that:-
  - a. The Respondent/Applicant serves the Appellant/ Respondent by close of business on 24<sup>th</sup> June, 2025 to enable the Appellant/Respondent file and serve a response by close of business on 27<sup>th</sup> June, 2025.
  - b. The Respondent/Applicant to file a Return of Service to confirm service upon the Respondent/Appellant.
  - c. Interparties hearing on 30<sup>th</sup> June, 2025.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 23<sup>RD</sup> DAY OF JUNE , 2025.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:

M/|S Nyabuto holding brief for M/S Gathecha counsel for Respondent/Appellant

No appearance for and by the Respondent/Appellant

Court Assistant - Martin

