



**Muchiri v Muchina (Civil Appeal 296 of 2015)  
[2023] KEHC 24001 (KLR) (Civ) (23 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24001 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL 296 OF 2015**

**JN MULWA, J**

**OCTOBER 23, 2023**

**BETWEEN**

**ERASTUS JOHN MACHARIA MUCHIRI ..... APPELLANT**

**AND**

**JANE WANJIRU MUCHINA ..... RESPONDENT**

**RULING**

**RULING ON APPLICATION DATED 30/06/2023**

1. The Applicant/Appellant seeks an order to review and set aside the dismissal order of the appeal dated 30/05/2022 for want of prosecution of the application dated 16/12/2021 it is based on provisions of Order 12 Rule 1 and Order 40 and 50 of the *Civil Procedure Rules*.
2. Reasons for the application as seen from the supporting affidavit sworn on the 30/06/2022 are that on the scheduled date of hearing, the court was not sitting, but another date was taken for the 30/05/2022, but inadvertently the Advocate did not diarize, and therefore failed to attend court to prosecute the application.
3. I have considered that the dismissal was due to inadvertence by the applicants advocates; after the said application had been taken out on several occasions in February and March, 2023 when this court was not sitting - engaged in Election Petition at Kajiado Law Courts, and thereafter proceeded on annual leave upto end of march, 2023.
4. On 20/07/2023 when the application was eventually listed before me, the applicant's advocate had no full instructions and therefore parties were directed to file submissions and a ruling date taken.



5. Upon consideration of the reasons and the intervening Court/Judge's absence from court for the two months for reasons stated therein, I am satisfied that indeed there was excusable mistake by the applicants advocates in failing to diarize the hearing date.
6. For ends of justice and fairness to be done, and to be seen to be done, in terms of provisions of Section 1A, 1B and 3a of the *Civil Procedure Act*, I am minded to allow the application.
7. Consequently, the Notice of Motion application dated 30/06/2023 is allowed, with the results that the application dated 16/12/2021 is re-instated for hearing on the 15/11/2023. No orders on costs.  
Orders accordingly.

**DATED, DELIVERED AND SIGNED IN NAIROBI THIS 23<sup>RD</sup> DAY OF OCTOBER, 2023.**

**JANET MULWA**

**JUDGE**

