



**REPUBLIC OF KENYA**

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

**CIVIL DIVISION**

**HIGH COURT CIVIL APPEAL NO. 294 OF 2012**

**PETER MBAU GAITHO.....APPLICANT**

**VERSUS**

**ANNA MUNYIUA & JOSEPH MUTUKU.....RESPONDENT**

**MBITHI**(Suing as the representatives of the  
estate of **JOB MULINGE MBITHI – Deceased**)

**RULING**

1. The application dated 7<sup>th</sup> March, 2018 seeks orders that the order made on 31<sup>st</sup> January, 2018 granting the Notice of Motion dated 29<sup>th</sup> June, 2017 be set aside and the motion be heard afresh.
2. It is stated in the grounds and the affidavit in support that the Applicant was not in court when the application dated 24<sup>th</sup> June, 2017 was heard and the application for dismissal of suit for want of prosecution allowed. The delay in prosecuting the appeal is blamed on failure by the registry to supply the lower court proceedings.
3. The application is opposed. It is stated in the replying affidavit that the appeal was filed six years ago and that the Applicant has not been keen in prosecuting the same.
4. I have considered the application, the response to the same and the submissions made.
5. It is clear from the record that the appeal herein was filed on 8<sup>th</sup> June 2012. No steps had been taken to prosecute the same until about five years later in the year 2017 when the application for the dismissal of the appeal was filed. The application for dismissal proceeded without the Applicant's participation though served.
6. The lower court record has now been availed. To serve the wider interest of justice, this court is inclined to allow the application. The application is hereby allowed on condition that the Record of Appeal be compiled and served and the appeal fixed for directions within 90 days from the date hereof. Costs to the Respondent.

Dated, signed and delivered in Nairobi this 4<sup>th</sup> day of Dec., 2018

**B. THURANIRA JADEN**

**JUDGE**