



REPUBLIC OF KENYA
IN THE HIGH OF KENYA AT MACHAKOS

Civil Appeal 78 of 2005

1. PETER KITHUKA MATOLO

2. QUENTIN WAMBUA MUTISYA

3. MICHAEL KINUTHIA MUTISYA.....APPELLANTS

VERSUS

BENSON MUTUKU.....RESPONDENT

R U L I N G

1. This appeal was dismissed on 2nd October 2008 for non-attendance by both parties. The appeal had been fixed for **mention** on that date by the registry for directions. Notice was to be served. There was no enquiry on record whether such notice had been served.
2. The appeal had not been formally admitted. Nor had it been summarily rejected.
3. As the appeal was not coming up for hearing, I hold the view that it was improperly dismissed when it came up for directions. The court ought to have given directions on the filing of record of appeal in preparation for hearing of the appeal.
4. Having read the affidavit in support of the **chamber summons dated 3rd July 2009** (for setting aside the order of dismissal and reinstatement of the appeal to hearing) and the replying affidavit, I am satisfied that the application has merit and I will allow the same. The order of dismissal of 2nd October 2008 is hereby set aside and the appeal reinstated for hearing. **It is hereby formally admitted.** Further directions will be given by the court in due course. Costs of the application will be in the cause. It so ordered.
5. The delay in preparation of this ruling is deeply regretted. It was caused by my poor state of health the last few years. But thank God I have now regained my full health.

DATED AT NAIROBI THIS 4TH DAY OF SEPTEMBER 2012

H. P. G. WAWERU
JUDGE

COUNTERSIGNED AND DELIVERED AT MACHAKOS THIS 28TH DAY OF SEPTEMBER 2012

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JUDGE