



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kibutu v Kipyakwai (Civil Appeal E016 of 2021)  
[2025] KEHC 5519 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5519 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL APPEAL E016 OF 2021  
SM MOHOCHI, J  
APRIL 29, 2025**

**BETWEEN**

**GABRIEL KIBUTU ..... APPELLANT**

**AND**

**JACOB YATOR KIPYAKWAI ..... RESPONDENT**

**RULING**

1. This Court has considered the Application dated 5<sup>th</sup> March, 2024 for setting aside the order of dismissal of appeal for want of prosecution.
2. The Court has equally considered the sole ground relied upon of not having been served with the notice to show cause by the Deputy Registrar. I have equally considered the Response filed in opposition.
3. I am unable to find any merit in this application for the following reasons:
  - i. The applicants were duly served electronically on the 6<sup>th</sup> April 2023 and the email address used is xxxxs@gmail.com the same address on record in this appeal.
  - ii. Any reasons giving rise to the dismissal of the appeal on 4<sup>th</sup> July, 2023 are moot for purposes of this application.
  - iii. The order of dismissal was not properly issued and there is no errors warranting this Court's interference.
  - iv. I equally fail to locate any other sufficient reason that would warrant setting aside the order for dismissal of the appeal.
  - v. Finally, the applicant has not in any way attempted to justify the eight (8) month delay in filing this application.



4. Order 10 rule 11 provided for the parameters in which the Court may set aside orders for such terms as may be just.
5. The Court further notes that the application dated 5<sup>th</sup> March, 2024 was filed on 24<sup>th</sup> July, 2024.
6. This Court finds no merit in the application dated March 5, 2024 is thus devoid of merit and the same is dismissed with costs to the Respondent.

It is so ordered.

**RULING READ, SIGNED AND DELIVERED AT NAKURU THIS 29<sup>TH</sup> DAY OF APRIL, 2025**

**MOHOCHI. S. M.**

**JUDGE**

