



Mukundi v Mugi (Suing as the legal representative of the Estate of Cecilia Wanjiku Gathoni) (Civil Appeal 017 of 2023) [2024] KEHC 10416 (KLR) (21 August 2024) (Ruling)

Neutral citation: [2024] KEHC 10416 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL 017 OF 2023
FN MUCHEMI, J
AUGUST 21, 2024
(FORMERLY KIAMBU CIVIL APPEAL NO. E035 OF 2021)**

BETWEEN

PAUL MWANGI MUKUNDI APPELLANT

AND

WINFRED WANJIRU MUGI (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF CECILIA WANJIKU GATHONI) RESPONDENT

(An appeal against Hon. A.M. Maina Chief Magistrate delivered on 16th February 2021 in Thika CMCC No. 2190/2024)

RULING

1. This appeal was pending judgment for 21/8/2024. It had been transferred from Kiambu Court after Thika High Court was gazetted. Following transfer to Thika on 30/8/2023, the appeal was mentioned before me three times and one time before the Deputy Registrar.
2. During the first mention on 01/11/2023, the counsels on record for both parties were present. The record of appeal had not been served despite directions of the High Court Kiambu given on 16th February 2023 to file and serve the record. This was in a ruling delivered by Ngetich J on the even date whereas the Respondent had applied for dismissal of the appeal in its application dated 2nd March 2021.
3. The Judge in her ruling saved the appeal which had been in that Court for two (2) years having been fled on 9th March, 2021 without any action to prosecute it being taken by the appellant. During this mention, the appellant's counsel one Mr. Njuguna was given seven (7) days on his request to file and serve the record
4. During the 2nd mention on 5/12/2023, no action had been taken and the appellant was given two months till 5/02/2024 to comply.



5. On the 05/02/2024, the matter was slated for mention but there was no appearance of the counsels for the parties. The appeal was fixed for mention on 22/04/2024 when counsels for both parties appeared.
6. The appellant's counsel informed the Court that the record of appeal was filed in Kiambu on 08/07/2022. But that it had been placed in the Thika file by then. The counsel promised to serve the record on the Respondents counsel within 14 days. The matter was fixed for mention on 17/06/2024 to confirm service of the record.
7. The matter came for mention the 4th time before this Court. The counsel for the Respondent appeared alone and informed the Court that both parties had filed submissions and asked for a judgment date which was given.
8. However, the Court while preparing the judgment perused the file and noticed that the submissions of the parties were not in the file. The submissions referred to by the counsel for the appellant were submissions of the parties filed in Kiambu for disposal of an application for dismissal of the appeal for want of prosecution dated 4th May 2022 whose ruling had already been delivered on 16th February 2023 in favour of the appellant.
9. This being the position of this appeal file and given its history and length of delay, as well as taking into account the ruling of Ngetich J, I hereby conclude that the appellant lost interest in this appeal as soon as it was filed. However, this appeal has been mentioned severally with the sole purpose of delaying execution of the judgment delivered on 16th February 2021 in favour of the Respondent. These tactics of the appellant have caused delay of about 3¹/₂ years in the name of an appeal that never was.
10. I therefore dismiss this appeal for want of prosecution with costs to the Respondent.
11. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 21ST DAY OF AUGUST 2024

F. MUCHEMI

JUDGE

