



**Gitau v Board of Management Njoro Precious Girls School (Civil Appeal  
16 of 2023) [2023] KEHC 22010 (KLR) (25 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 22010 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL APPEAL 16 OF 2023  
SM MOHOCHI, J  
AUGUST 25, 2023**

**BETWEEN**

**ANN WANJIRU GITAU ..... APPELLANT**

**AND**

**THE BOARD OF MANAGEMENT NJORO PRECIOUS GIRLS  
SCHOOL ..... RESPONDENT**

**RULING**

**Introduction**

1. The Application before the court is the Appellant's Notice of Motion dated 23<sup>rd</sup> September 2022, brought pursuant to Sections IA & B, 3A, of the [Civil Procedure Act](#), Order 17 Rules 1 and 2 of the [Civil Procedures Rules](#) and all enabling provisions of the Law.
2. The application seeks one (1) substantive prayer namely;  
The court be pleased to dismiss the Appeal against the Respondent/Applicant for want of prosecution.
3. The Applicant/Respondent further seeks Costs of the Application.
4. The Application is based on a sole ground on the face of the application are that the appeal was filed on the 6<sup>th</sup> December, 2019 and since filing the appellant has not taken any steps to have appeal mentioned or heard before this honorable court for Directions; that the Respondent/Appellant went to slumber and has not taken any steps to further progress the suit: that the appellant/respondent is no longer interested in the matter.
5. The Court has considered the motion together with supporting and opposing affidavits and filed written submissions and notes that the Respondent/Appellant filed her replying affidavit dated 30<sup>th</sup> March, 2023 and annexed 12 Exhibits marked as "CT1" to "11 (b)" outlining the steps she has taken to ensure that the appeal is ready to be heard and determined on merit. The Respondent/Appellant



urges the court to consider each of the exhibit as contained in the replying affidavit for full import maintaining that she has been diligent in seeking to have the Appeal heard and determined she contends that the appeal is not ripe for dismissal and the application is bad in law, made in bad faith, inept, lacks merit and afterthought only intended to prejudice her.

6. The Appellant/Respondent urges not to be punished for circumstances beyond her control such as delays in obtaining certified proceedings from the trial court.
7. The Court further notes, the diligence exhibited by the Appellant/ Respondent having sought for a court mention date for directions on the 7<sup>th</sup> April 2022 and that the entire record of Appeal was received from the Trial Court on the 1<sup>st</sup> September 2022.
8. The Appeal is yet to be set down for directions under section 78B and 78 C that would allow applications such as this and that the provisional rule invoked presupposes issuance of a notice to show cause issued by the court as a basis of determining if the matter should be dismissed and further that the appropriate rule to invoke would ideally be Order 42 Rule 35(2).
9. The court is unpersuaded that the Appellant/Respondent has not take measures to set down the Appeal for hearing, in fact the contrary is true and thus disallow this application.
10. From the foregoing, it is no doubt the Notice of Motion dated 23<sup>rd</sup> September 2022, lacks merit and does not meet the threshold for grant of the prayers sought. The same is accordingly dismissed with costs to the Appellant/Respondent.
11. The Appellant is accordingly directed to fix the Appeal for directions and hearing within the next sixty (60) days from the date

**SIGNED, DELIVERED VIRTUALLY ON TEAMS PLATFORM ON THIS 25TH AUGUST, 2023**

.....

**MOHOCHI S.M**

**JUDGE**

In the presence of: -

Applicant/Respondent– Absent

Mr. Tombe Advocate for the Appellant/Respondent

