

THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL DIVISION

CIVIL APPEAL NO.463 OF 2018

CONSUMERS FEDERATION OF KENYA (COFEK).....APPELLANT

-VERSUS-

PHILIP DAVID TEACHER.....RESPONDENT

R U L I N G

1. The matter came up for parties and in their respective counsel to show cause why the appeal should not be dismissed for want of prosecution.

2. In response, thereto, **Mr. Kurauka**, Counsel for the Appellant attended court and explained that they had been trying to trace the lower court file so as to file a Record of Appeal. He requested for a period of 30 days to enable them compile, file and serve the Record of Appeal. Counsel for the Respondent stated that since the filing of the appeal in **2018**, the Appellant's counsel had not taken any steps to prosecute the same and had not even filed a **Replying Affidavit** to demonstrate the steps undertaken since then despite having been served with the **Notice to Show Cause** on **17th February, 2022**. The Respondent's counsel submitted that it was clear that the Appellant had lost interest in the appeal and the same should be dismissed with costs.

3. To which **Mr. Kurauka** responded by stating that it would be unfair to dismiss the suit when the matter has been active both in lower court and this court. He maintained his plea that he be granted 30 days leave to enable him trace the file, prepare and file the Record of Appeal.

4. Having listened to both counsel in regard to whether or not to dismiss the appeal for want of prosecution, I have perused the court record. I find that the last time any action was taken on the file was on **11th September, 2019**. It is now **25th March, 2022**, which makes it almost 3 years since any step was taken in the matter. This still makes the matter ripe for dismissal for want of prosecution. However, the Appellant's counsel having attended court, I wish to invoke the provisions of **Section 3A** of the **Civil Procedure Act** and grant the Appellant a last chance to prosecute the appeal.

5. I therefore direct that:-

a) The Appellant to compile, file and serve the Record of Appeal within 30 days from today.

*b)
Mention on 27/4/2022 before the Deputy Registrar.*

RULING DELIVERED VIRTUALLY, DATED and SIGNED at NAIROBI this 4th DAY OF APRIL, 2022.

D. O. CHEPKWONY

JUDGE