



REPUBLIC OF KENYA



Wangai v Murathe (Civil Appeal 34 of 2019) [2022] KEHC 10444 (KLR) (23 June 2022) (Ruling)

Neutral citation: [2022] KEHC 10444 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL 34 OF 2019
HK CHEMITEI, J
JUNE 23, 2022**

BETWEEN

TERESA WANJIKU WANGAI APPELLANT

AND

DANIEL NDUNGU MURATHE RESPONDENT

RULING

1. By his Notice of Motion dated 12th November 2020 the applicant prays that this appeal be dismissed for failing to comply with the requisite provisions of the law namely seeking leave before it was instituted and for want of prosecution.
2. The application is premised on the grounds thereof and the sworn affidavit of Kiongo P Murimi advocate for the applicant which was sworn on the same date.
3. The application is unopposed despite several times being adjourned for failure by the respondent to attend court.
4. The court has perused the same and is of the considered opinion that it is meritorious. The applicant has not for almost two years now prosecuted her appeal and there is no evidence of such. There is no evidence that the record of appeal has been prepared or at all.
5. On the issue of not complying with the provisions of Section 75 of the *Civil Procedure Act* and Order 43 Rule 1 of the *Civil Procedure Rules*, this court may not make a definite orders noting that it is not privy to the proceedings at the trial court. In other words, there may be a possibility that the applicant sought the leave of the court.
6. Nonetheless for the reason stated above the court finds the period taken by the applicant to process her appeal inordinately long without any lawful excuse.
7. The application is allowed with costs to the applicant.



DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAKURU THIS 23RD JUNE 2022.

H K CHEMITEL.

JUDGE

