



REPUBLIC OF KENYA



KENYA LAW
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**Kiogora & another v Mburu (Civil Appeal E060 of 2021)
[2022] KEHC 14501 (KLR) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14501 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E060 OF 2021
TW CHERERE, J
OCTOBER 27, 2022**

BETWEEN

NEWTON KIOGORA 1ST APPELLANT

DERRICK MUTUMA KINYUA 2ND APPELLANT

AND

KELVIN MWANGI MBURA RESPONDENT

RULING

1. This appeal was filed on May 5, 2021 and to date it has not been prosecuted. By notice of motion dated May 25, 2022, Applicant seeks that the appeal be dismissed for want of prosecution. The application is based on ground on its face and on the supporting affidavit sworn on May 25, 2022 by Joel Mutuma, advocate for the applicant who avers mainly that the pendency of the appeal is denying Applicant the fruits of his judgment.
2. In his response vide a replying affidavit sworn on July 6, 2022, Lawrence Njuguna, advocate avers that the delay in compiling the record of appeal has been caused by the lower court's failure to supply the same in spite of a request for proceedings, judgment and decree by a letter dated June 14, 2021.
3. I have considered the application in the light of the affidavits on record and annexures thereto.
4. Whereas there is evidence that the letter dated June 14, 2021 requesting for proceedings, judgment and decree was received by Nkubu Court on June 21, 2021, more than a year later, it has not been demonstrated by respondents that a follow up to that letter has been made.
5. Clearly, the respondents have not been diligent. The foregoing notwithstanding, it should be the court's last resort to deny a party a chance to be heard on merit.
6. Consequently, the call for dismissal of the appeal is disallowed with orders that Respondents file and serve the record of appeal not later than 30 days from today's date.



7. Mention on 15th December, 2022 to confirm compliance with the abovementioned orders and for further orders

DATED AT MERU THIS 27TH DAY OF OCTOBER 2022

WAMAE.T. CHERERE

JUDGE

Appearances

Court Assistant - Morris Kinoti

For Appellants/Respondents - Mr. Njuguna for Kimondo Gachoka & Co. Advocates

For Respondent/Applicant - Mr. Mutuma for Mutuma & Koskei Advocates

