



REPUBLIC OF KENYA



**Gichehia v Griffiths (Civil Appeal 42 of 2018)
[2022] KEHC 17147 (KLR) (19 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 17147 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL APPEAL 42 OF 2018
GL NZIOKA, J
DECEMBER 19, 2022**

BETWEEN

JOSEPH NGURE GICHEHIA APPELLANT

AND

GEOFFREY GRIFFITHS RESPONDENT

RULING

1. The respondent has applied for dismissal of the matter herein on the ground that the appellant has not set it down for hearing for a long time. The appellant has however, opposed the appeal on the ground that he has been having a challenge with the previous counsel on record and has now instructed a new counsel who requires seven days within which to file and serve a complete record of appeal.
2. I have considered the matter and I find that, the appellant filed a memorandum of appeal on August 16, 2018. That is a period of 4 years and four months. It is clear that todate, no record of appeal has been filed. The court records indicates as follows;-
 - a. On September 23, 2021, the court observed that, no record of appeal has been filed.
 - b. On November 23, 2021, the court observed the appeal was old and directed respondent to serve the appellant with a notice to show cause why the appeal could not be dismissed.
 - c. On May 18, 2022, the court was informed that the Notice to show cause had been served. However, the learned counsel for the appellant sought for indulgence on the ground that, the law firm had just taken over the matter. He was given 30 days within which to file a complete record of appeal.
 - d. On July 17, 2022, the said counsel sought for leave to file an application to withdraw from acting for the Appellant. It is noteworthy that, by that time, the record of appeal had not been filed, yet the 30 days given for the same had expired.



- e. On October 6, 22, the appellants counsel withdrew the application to cease acting for the complainant. The appellant was allowed to file and serve the record of appeal and further directions given on filing of submission upon admission of the appeal.
 - f. On December 1, 2022, the court issued a second notice to show cause to the appellant, upon the application thereof by the respondent.
 - g. Apparently, the counsel seeking for seven (7) days is reacting to that notice to show cause.
3. Pursuant to the aforesaid the following is clear;-
- a. The matter herein has not been prosecuted for over 4 years. That is inordinate delay.
 - b. The appellant has been indulged all through and accorded several opportunities to file the record of appeal in vain.
 - c. On each occasion the appellant is served with a notice to show cause, he instructs a new counsel to state that, he has just been instructed.
 - d. The trial court file has all along been available with the typed proceedings, therefore if the appellant was vigilant, he should have filed a record of appeal.
4. It is therefore clear that, even if the appellant is given a further chance nothing will happen in the matter. I am therefore inclined to concur with the respondent's prayer for dismissal of the matter with costs. However, in the interest of justice, I shall allow strictly the seven (7) days requested for, for the record of appeal to be filed and served. The seven days run from the date of this order. On the 8th day hereof, if the record of appeal will not have been filed and served the appeal will stand dismissed automatically with further reference to court, with costs to the respondent.

It is so ordered.

DATED, DELIVERED AND SIGNED ON THIS 19TH DECEMBER 2022

GRACE L. NZIOKA

JUDGE

In the presence of:-

Ms Ogutu- Court Assistant

Ms Njoroge for the Respondent

