



**GA v SA (Family Appeal 20 of 2016) [2021] KEHC 9785 (KLR) (24 May 2021) (Ruling)**

Neutral citation: [2021] KEHC 9785 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA**

**FAMILY APPEAL 20 OF 2016**

**JN ONYIEGO, J**

**MAY 24, 2021**

**BETWEEN**

**GA ..... APPELLANT**

**AND**

**SA ..... RESPONDENT**

*(Originating from Principal Kadhi's court (Hon. Abdulhalim H Athman) on the 5<sup>th</sup> day May of 2016 in KSC No 96/2010)*

**RULING**

1. *Vide* a memorandum of appeal dated May 24, 2016, the appellant herein moved to this court challenging a ruling made and delivered by the principal Kadhi's court (hon Abdulhalim H Athman) on the 5<sup>th</sup> day May of 2016 in KSC No 96/2010.
2. Contemporaneously filed with the said memorandum of appeal is a notice of motion dated June 9, 2016 seeking stay of execution of the orders arising from the impugned ruling pending hearing and determination of the appeal. On June 13, 2016 the court directed the applicant to serve the application and then take a date at the registry for interpartes hearing.
3. Unfortunately, both the application and the appeal were rendered dormant with no steps taken by the appellant to prosecute their case. On February 22, 2021 the respondent filed a notice of motion dated February 23, 2021 under order 42 rules 13 and 35 (1) and (3) of the Civil Procedure Rules and, section 1A, B& 3B of the Civil Procedure Act seeking to have the appeal herein dismissed for want of prosecution. The application is supported by grounds stated on the face of it and averments contained in the affidavit in support sworn by Safiya Abdulhussein the applicant herein stating that; the appellant is not interested with prosecuting the appeal nor the application for stay of execution; the appeal has been pending since 2016 without any step taken and that litigation must come to an end.



4. Despite service of the application herein and hearing notice upon the respondent's counsel, no response was filed. Therefore, the matter proceeded *ex parte* with Mr Salim reiterating the content of the affidavit in support thus urging the court to allow the application.
5. From the record, it is clear that the appeal has been pending for too long since court May 24, 2016. The appellant seems to have lost interest in the case even when the court directed parties to fix hearing date for the application seeking stay. Indeed, litigation must come to an end. See *Patrick Gatbenya Vs Esther Njoki Rurigi and Another* (2008) eKLR.
6. I have no doubt this is a suitable appeal to dismiss for want of prosecution. It is now 5 years down the line since the appeal was lodged. There is nothing to salvage. The court had called even for the original record(file) from the Kadhi's court and proceedings typed as required under order 42 rule 13 of the *Civil Procedure rules* yet the appellant was not ready even to serve a record of appeal. It is trite that equity is not for the indolent.
7. Accordingly, the application is allowed and the appeal herein dismissed for want of prosecution.

**DATED, SINGED AND DELIVERED VIRTUALLY AT MOMBASA THIS 24<sup>TH</sup> DAY OF MAY, 2021.**

.....

**J. N. ONYIEGO**

**JUDGE**

