



REPUBLIC OF KENYA



Yusuf v George (Civil Appeal 10 of 2015) [2021] KEHC 9832 (KLR) (22 October 2021) (Ruling)

Neutral citation: [2021] KEHC 9832 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL 10 OF 2015
JN ONYIEGO, J
OCTOBER 22, 2021**

BETWEEN

MOHAMED YUSUF APPLICANT

AND

ESHA GEORGE RESPONDENT

(Originating from the decision of Kadhi Said Hamisi Bedzanga in civil case No 44/2012)

RULING

1. By an application dated November 16, 2016, the respondent /applicant moved to this court under order 17 rule 2, 3 and 4 of the [Civil Procedure Rules](#) seeking dismissal of the appeal herein for want prosecution. The application is based on the ground that the applicant/respondent has over a period of six months failed to prosecute his memorandum of appeal filed on May 20, 2015 challenging the decision of Kadhi Said Hamisi Bedzanga in civil case No 44/2012. Further, that the appellant has for over a similar period of time failed to prosecute his application dated November 23, 2015 seeking stay of execution of the impugned judgment.
2. The application is further supported by an affidavit sworn by Joseph Karisa counsel for the respondent/applicant. It was averred that, since 8th February, 2016 when the court made directions that the appellant's documents were not properly filed, no action has been taken.
3. Despite service of the application, the appellant /respondent did not file any response. The application was therefore argued *ex parte*. There is no dispute that the memorandum of appeal filed on May 20, 2015 has been dormant in the court registry without any action being taken. On February 8, 2016, the court gave the appellant /respondent 30 days within which to engage an advocate and then file the matter for hearing. However, since then, the appellant has not moved he court.
4. Basically, the file was last acted upon on June 8, 2016. Since then, the appellant/respondent has not bothered to move the court for any action. order 42 rule 35 of the [Civil Procedure Rules](#) provides for dismissal of an appeal for want of prosecution if the appeal is not set down for hearing within 3 months



after directions pursuant to order 42 rule 13 of the Civil Procedure Rules. Despite being given time by the court to move the court within 30 days after engaging legal representation, the appellant chose to go and sleep.

5. It is now six years since the memorandum of appeal was filed. The appellant is ultimately disinterested with this case. The file cannot lie in our registry as a pending appeal forever.
6. I do agree with the respondent/appellant that this is an appropriate case for dismissal for want of prosecution. Accordingly, the appeal herein through a memorandum of appeal filed on May 25, 2015 and application filed November 23, 2015 are dismissed for want of prosecution with costs to the respondent /applicant.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 22ND DAY OF OCTOBER, 2021

J. N. ONYIEGO

JUDGE

