

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CIVIL APPEAL NO. 118 OF 2017

KENGA CHENGO KASISIAPPELLANT

VERSUS

SAID SOOD MOHAMED SHIKELY (Suing on behalf of the estate of the late

SOOD MOHAMED SAID SHIKELY.....RESPONDENT

MAHMOUD OSMAN HIRSIPURCHASER

RULING

1 The Appellant, who was the Defendant in RMCC No. 1226 of 2002, filed an appeal against the ruling by Hon. Yator on 12th November, 2003 on 12th June, 2017.

2 And on 9th November, 2018, FARAJ AHMED SALIM MSAAD, vide a Notice of Motion dated 5th November, 2018, appealed to be enjoined as an interested party to the appeal . The application was not opposed and FARAJ AHMED SALIMMSAAAD was enjoined as and interested party to the appeal and allowed to file his pleadings accordingly on 5th March, 2019.

3 The interested party in the chamber summons application dated 5th November , 2018 sought for the dismissal of the appeal herein for want of prosecution on the grounds that;

(a) the appeal had not been set down for directions and or hearing since it was filed two years ago;

(b) the applicant has lost interest in having the appeal prosecuted;

(c) the interested party is suffering detriment as the appellant is using the appeals existence as a defence to the interested party's plaint against the applicant for eviction orders and to defeat justice.

4 On 9th April, 2019, the counsel for the parties were given directions on how to dispense of the said application and highlighting of their written submissions fixed for 3.6.2019. And on this day, only counsel for the interested party had complied with the directions of 9th April, 2019. Also, neither the applicant nor respondent attended court for the highlighting. The court then set down a ruling date for the application.

5 In determining the application dated 5.11.2018, I find that same is unchallenged as neither the applicant nor the Respondent filed a response or submissions to the application. In the circumstances, I proceed to find that the chamber summons dated 5th November, 2018 being unopposed, is allowed as presented.

6 The appeal filed on 12th June, 2017 be and is hereby dismissed for want of prosecution with costs to the interested party.

It is so ordered.

Ruling is delivered this 25th day of June, 2019.

LADY JUSTICE D. O. CHEPKWONY