

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL APPEAL NO. 99 OF 2016

STEPHEN MUGWIKA.....APPELLANT

VERSUS

NASHON ODUOR (suing through

JARED VODOSHI ONGALA as next friend).....RESPONDENT

(An appeal arising from the judgment and decree of the Vihiga Principal Magistrate in Vihiga PMCCC No. 8 of 2014 of 26th February 2014)

RULING

1. The application for determination is dated 13th February 2019. It seeks dismissal of the appellant's appeal dated 17th November 2016. The grounds upon which it premised are that it is over three years since it was filed yet the appellant was not taking steps to prosecute it.
2. There is a reply to the application. The deponent to the affidavit in reply enumerates the steps that were taken since the filing of the appeal in November 2016. He explains that there was an application for stay of execution argued, after which letters were written to ask for copies of certified proceedings and judgement and that the certified copies of the judgment and proceedings were never delivered.
3. He has attached to his affidavit copies of several documents to support his case. There are copies of letters he alleged to have had written to the court registry requesting for proceedings, among others, which correspondence was never responded to.
4. Directions were given on 25th March 2019 for disposal of the application by way of written submissions. The appellant filed written submissions, the respondent did not. The appellant's written submissions essentially make oral arguments based of the facts averred in the affidavit sworn in support. No legal arguments are made, no statutory provisions cited nor case law referred to.
5. The record before me is clear. The appeal was filed in 2016. By the time the application was lodged in 2019 the record of appeal had not been filed, directions had not been taken and the matter had not been listed for hearing. I am not satisfied that there was serious effort made to advance the matter beyond filing it.
6. Consequently, I do hereby dismiss the appeal herein. The respondent shall have the costs of the appeal. The appellant has twenty-eight days to move the Court of Appeal appropriately, should he be dissatisfied with this ruling.

DATED, SIGNED and DELIVERED at KAKAMEGA this 26th DAY OF July, 2019

W. MUSYOKA

JUDGE