



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 367 OF 2004

SOLOMON MBUGUA KORI.....APPELLANT

VERSUS

BROOKE BOND (K) LTD.....RESPONDENT

Being an appeal from the Ruling of the Senior Resident Magistrate's Court at Nairobi

(Milimani Commercial Courts) delivered by the Hon. Gichohi (Mrs) on 29th January, 2004

RULING

The appeal herein was filed in the year 2004 and since then the appellant has not taken active steps to prosecute the same. As a result, the court on its own motion listed it for Notice to Show Cause why it should not be dismissed for want of prosecution.

When it was last in court on the 8th day of October, 2019, counsel for the appellant requested for time to file an affidavit in response to the Notice to Show Cause, which request was granted by the court and the matter was stood over to 28/10/2019 for Notice to Show Cause. On the said date, there was no appearance by either party but the appellant had already filed an affidavit in response to the notice but the respondent has to date not filed any.

The court has considered the contents of the affidavit filed by the appellant and sworn by Njeri Kariuki Advocate, on the 22nd October, 2018. She avers that this Honourable Court gave directions for the parties to file submissions for the appeal but the appellant has not filed the same as the advocate who was handling the matter left the firm before preparing and filing the same.

That as a result, the matter did not receive the attention it deserved and her office file was put away with no further action. She therefore contends that failure to file the submissions as ordered by the court was not deliberate but was due to an honest mistake, which she requests this Honourable Court to excuse in the interest of justice. She urges the court not to visit her mistake upon her client. She has offered to comply with the directions that this court would give.

The court has considered the affidavit and has perused the record of the proceedings. It is noted that the appeal was first listed for notice to show cause, on the 16th June, 2015 when counsel for the appellant informed the court that the appellant was still interested in prosecuting the appeal and the court spared the same from dismissal.

On the 7th day of October, 2016, the appeal was certified ready for hearing and the court ordered that a hearing date be fixed in the registry. The appellant fixed a hearing date for 5th October, 2017 but rather than serve a hearing notice upon the respondent, he served a mention notice and therefore the matter could not proceed on the said date and it was stood over to the 14th November, 2017 for directions.

On the said date, the respondent had been served and the court gave directions on filing of submissions after certifying the appeal ready for hearing. The matter was then scheduled for mention on 18th December, 2017 to confirm compliance but on the said date, there was no appearance by both parties and the court made an order that the file be returned back to the registry.

The next time the matter appeared on the cause list was on 8th October, 2019 when the court issued notice to show cause to the parties when the appellant sought leave to file an affidavit in response.

With that chronology of events, it is clear that the appellant has lost interest in prosecuting the appeal. Since it was first listed for notice to show cause on the 16th day of June, 2015 it is now over four years without much action on the part of the appellant. The impression that this court gets of the appellant is that of a party who is no longer interested in his appeal. The court has given him ample time to prosecute the

same but he has chosen not to do so. It is trite that a case belongs to a client and it is his duty to be visiting his advocate to enquire the position of his matter.

This court has come to the conclusion that the appellant is not deserving of this courts discretion.

The appeal is hereby dismissed with costs to the respondent.

Dated, Signed and Delivered at Nairobi this 31ST day of OCTOBER, 2019.

.....

L. NJUGUNA

JUDGE

In the Presence of

..... For the Applicant

.....For the Respondent