



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE-J)

CIVIL APPEAL NO. 55 OF 2006

GEORGE OTIENO SOMBE (suing as the personal and

***legal representative of Susan Auma (deceased)*.....APPELLANT**

VERSUS

ERNEST OGET KIVAL.....RESPONDENT

RULING

1. By a notice of motion dated 03rd September, 2019, the Respondent seeks dismissal of the Appeal for want of prosecution together with costs.
2. The application is based on the grounds that among others that the appeal was filed on 02nd June, 2006 and has to date not been prosecuted.
3. The application is supported by the affidavit sworn by the applicant on 03rd September, 2019 by Jude Ragot, advocate for the Applicant who reiterates the grounds on the face of the application. He further avers that the matter was last in court on 22nd September, 2015.
4. James Omondi Bunde, advocate for the Respondent in his replying affidavit sworn on 13th September, 2019 faults the court for not admitting the appeal for hearing.
5. Order 17, rule 2 of the Civil Procedure Rules provides that:

(1) In any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.

(2) Any party to the suit may apply for its dismissal as provided in sub-rule 1.

6. The applicant has not explained why no action has been taken to prosecute the appeal since 22nd September, 2015. The Appellant's attempt to blame the court for not admitting the appeal is unacceptable for the reason that he has not explained his indolence in not taking any action to ensure that the appeal was admitted for hearing.
7. In the end, the notice of motion dated 03rd September, 2019 is considered and allowed with costs to the applicant/Respondent.

DELIVERED AND SIGNED AT KISUMU THIS 24th DAY OF October 2019

T. W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Amondi/Okodoi

For the Applicant - N/A

For the respondent - N/A