



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYAHURURU

CIVIL APPEAL NO.119 OF 2017

(Appeal Originating from Nyahururu CM's Court Civ.No.283, 284, 285, 286, 287, 290 of 2016 by: Hon. S.N. Mwangi – S.R.M.)

THE PRESBYTERIAN FOUNDATION BOARD OF GOVERNORS

PCEA FAITH ACADEMY..... RESPONDENTS

PETER MUCHIRI

- V E R S U S -

ELIZABETH WANGARI KAHARO

ANN MUTHONI KAGENYO

CATHERINE NYAWIRA GAKUI

MARY WANJIRU NJOROGI

ANN NJOKI KINUTHIA

GIDRAY GITAHI WANJIKU

MARY WANGECI NDIRITU

RAHAB WANJIKU MURITHI.....APPELLANTS

R U L I N G

By the Notice of Motion dated 2/9/2019, the Respondents Elizabeth Wangari Kaharo and 7 others, through the firm of Gekonga Advocate, seek to have the appeal filed by the appellants dismissed for want of prosecution. The applicants contend that 2 years and 8 months have lapsed since the appeal was filed and no steps have been taken by the appellants towards its prosecution.

Mr. Gekonga filed an affidavit dated 2/9/2019 in support. He deposed that the appeal arose for several cases in Nyahururu CMCC.283 – 290/2016, where judgment was entered and damages awarded to the respondents/applicants; that so far, 2 years and 8 months have lapsed without prosecuting the appeal which is prejudicial to the respondents and has caused them anxiety and uncertainty and should therefore be dismissed.

Yogo Ouko, counsel for the applicants/respondents filed a replying affidavit opposing the application for dismissal. He deposed that since filing the appeal, they have written several letters to the Executive Officer requesting for typed copies of proceedings for purposes of preparing a Record of Appeal but the said letters have not elicited, any response. YB-1 are annexures of letters; that enquiries have been made at the Executive Officer's Office but the response has been that the files are still in the typing pool. Counsel submitted that they have been unable to prepare the Record of Appeal because of the backlog at the typing pool and that the appellants are therefore not to blame for the delay.

I have considered the application and the Replying Affidavit. The respondents annexed letters dated 27/3/2018 and 4/4/2019 addressed to the Executive Officer Nyahururu Law Courts requesting for typed proceedings. This appeal was filed in September, 2017. Since then the

appellants have only addressed two letters to the Executive Officer requesting for proceedings. They took some time before they made the said request. The appellants have not been vigilant in pursuing the typing of the proceedings.

However, having shown that they have endeavored to get the proceedings as late as April, 2019 and this court being aware of the fact that there was a shortage of typists at this court, I will not blame the appellants for the delay in prosecuting the appeal.

The delay is basically attributed to the court.

However, the court has now got enough typists and there should be no more delay in getting the proceedings and preparing a Record of Appeal.

The applicant will therefore be allowed 6 months within which to procure the proceedings and prepare a Record of Appeal failing which the appeal will stand dismissed.

Mention of this matter on 25/5/2020 for compliance.

Dated, Signed and Delivered at NYAHURURU this *19th* day of December, 2019.

.....

R.P.V. Wendoh

JUDGE

PRESENT:

Parties - absent