

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 203 OF 2003

TRANSCOM CO-OPERATIVE SAVINGS & CREDIT LIMITED.....APPELLANT

VERSUS

FRANCIS MBUGUA NDUU.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

RULING

The Appeal herein was filed on 10th April, 2003. It arose from the judgment of Hon. Mrs. Wamae (S.R.M) in Nairobi CMCC No. 7057 of 2001 which was delivered on the 21st March, 2003.

I have perused the court record and it shows that the matter was last in court on 28th February 2011 when it was stood over to the 13th April 2011, on which date the record does not show what transpired. Thereafter, no action was taken until the 11th day of May 2018 when it was listed for Notice to show cause why it should not be dismissed for want of prosecution.

On the said date, Counsel for the Appellant told the court that they are ready and willing to prosecute the Appeal. The reasons given for the slow pace in prosecuting the same are that though the Appellant filed a Record of Appeal on the 30th October, 2009, the court file went missing and there have been several applications which have delayed the Appeal. He urged the court to allow the Appellant to prosecute the Appeal.

On his part, Counsel for the Respondents submitted that the Appellant has not given a good explanation why the Appeal has not been prosecuted. That as a result of delay in prosecuting the Appeal, the Respondent had filed an application to dismiss the same in the year 2009. He argued that the pendency of the Appeal is prejudicial to the 1st Respondent. With regard to the submission by counsel for the Appellant that the court file was missing, Counsel for the 1st Respondent averred that the only time the court file was said to have gone missing was when the 1st Respondent applied to have the decretal sum released but it was in the Accounts Section.

The court has considered the submissions made by both counsels in response to the Notice to show cause. As earlier noted, the court has perused the court record and it is noted that since the Appeal was filed in the year 2003, nothing much has gone on in the matter. A record of Appeal was filed on the 30th day of October, 2008 and the Lower Court file was forwarded to this court way back in the year 2009 vide a letter dated 18th May, 2009.

The Appellant filed an application dated the 2nd day of June, 2009 seeking among other orders that the court file be reconstructed. That application was heard by Justice Waweru who granted the orders for reconstruction of the court file but ordered that the rest of the application be heard on 9th June, 2009. Thereafter, the original court file was traced and on 9th June 2009 the court ordered that the proceedings do continue in the original file. The last action in this Appeal was taken on 13th April 2011.

Though, it's true that at some point the court file went missing, the order for reconstruction was given way back on 3rd June 2001 and therefore Counsel for the Appellant cannot be excused for not taking action on account of the missing court file. It is now more than seven years since the matter was last in court and as rightly submitted by Counsel for the 1st Respondent, no good reasons have been given why the Appeal has not been prosecuted.

In the premises aforesaid, the Appeal is hereby dismissed for want of prosecution with costs to the 1st Respondent.

Dated, Signed and Delivered at Nairobi this 21st Day of June 2018.

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L. NJUGUNA

JUDGE

In the Presence of

..... For the Appellant

..... For the Respondent