



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

**CIVIL APPEAL NO. 208 OF 2009**

**CONSOLIDATED WITH**

**CIVIL APPEAL NO. 215 OF 2009**

**BETWEEN**

**KIPKEBE TEA COMPANY LIMITED.....APPELLANT**

**AND**

**PAUL NYAKUNDI NYAMUGA .....1<sup>ST</sup> RESPONDENT**

**KEBIRIGO GENERAL STORES.....2<sup>ND</sup> RESPONDENT**

**(Appeal from the Judgment and Decree of Hon. S. Wewa RM dated and delivered on 29<sup>th</sup> September 2009 by Hon. Kimutai SRM in Kisii CMCC No. 565 of 2000)**

**RULING**

It is not in dispute from the record that no step has been taken by the appellant since 11<sup>th</sup> December 2015 when the Judge directed the parties to take steps to prosecute the matter until the application to dismiss the appeal was filed on 12<sup>th</sup> April 2018.

The appellant contends that the reason for failing to take steps is because of the transfer of Judges which has prevented appeals from progressing, that it has been difficult to get a date from the registry hence difficult to fix the matter and that it was the duty of both advocates to fix the matter for hearing.

The court in dismissing an appeal is called upon to exercise its discretion on the basis that the reasons for failure to prosecute the appeal have been explained. I note that this is a 2009 appeal and I do not find the reasons advanced reasonable as nothing has been shown that would have prevented the appellant from prosecuting the appeal. No letter was addressed to the Registry for the period of three (3) years expressing difficulty in prosecuting the appeal. The appeal belongs to the appellant and a respondent who is wary of waiting for an appellant to prosecute its appeal is entitled to apply for its dismissal.

This appeal is now dismissed for want of prosecution with costs of Ksh. 15,000/=.

**D.S MAJANJA , J**

**19/6/2018**

**Court:** Judgment read and delivered in open court.

**D.S MAJANJA, J**

**19/6/2018**