

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 84 OF 2005

JAMES MUSEMBI VAITA..... APPELLANT

VERSUS

AUTOMOTIVE & INDUSTRIAL BATTERY

MANUFACTURERS LIMITED.....RESPONDENT

RULING

The Appeal herein was filed on the 24th February 2005 being an Appeal against the judgment and Decree of the Chief Magistrate Court at Nairobi, in CMCC No. 4432 of 2003.

After filing the appeal the Appellant went to sleep and on 11th may 2018, the court listed the same for notice to show cause why it should not be dismissed for want of prosecution, under the provisions of Order 42 Rule 35(2) of the Civil Procedure Rules.

On the said date, Mr. Nyabene holding brief for Mr. Wambugu informed the court that there are two applications pending hearing both of which were filed by the Respondents. He did not tell the court whether the Appellant is still interested in pursuing the Appeal and what steps he has taken since the Appeal was filed. This is notwithstanding the fact that the matter had been listed for Notice to show case.

The court has perused the record and it is noted that since the Appeal was filed, no action has been taken by the Appellant to prosecute the same. Infact, save for the Memorandum of appeal filed on 24th February, 2005 nothing else has been done in this matter. The two applications that are said to be pending are not on record and it is doubtful if indeed there are any such applications. Even assuming, there are pending applications, the Appellant is at liberty to fix them for hearing and/or apply to have them dismissed to pave way for the hearing of the Appeal.

It is further noted that the Lower Court file was forwarded to this court and upon perusal of the same, it shows that proceedings were typed and a copy of the decree issued on 23rd February, 2009 yet the Appellant herein has not even filed a record of Appeal. This is a clear indication that the Appellant has lost interest in the Appeal.

In the end, I find that no good cause was shown why the Appeal should not be dismissed and I therefore order that the same be and is hereby dismissed for want of prosecution.

Dated, Signed and Delivered at Nairobi this 14th Day of June 2018.

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L. NJUGUNA

JUDGE

In the Presence of

..... *For the Applicant*

..... *For the Respondent*