

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 164 OF 2010

THE ATTORNEY GENERAL.....APPELLANT

V E R S U S

ELISHA MUIGAI.....1ST RESPONDENT

ALICE WAMBUI MUIGAI.....2ND RESPONDENT

RULING

1. Elisha Muigai and Alice Wambui Muigai, the 1st and 2nd respondents respectively took out the motion dated 15th February 2016 in which they applied for this appeal to be dismissed for want of prosecution. The motion is supported by the affidavit of Evans Wachira. The motion was served upon the Hon. Attorney General as evidenced in the affidavit of service sworn by David Kiama Muicho. The Hon. Attorney General did not deem it fit to file a response to the motion hence the respondents were permitted to proceed exparte. Both parties were invited to file written submissions, again, the Hon. Attorney General did not deem it fit to file the same.

2. I have considered the grounds stated on the face of the motion. I have also taken into account the facts deponed in the supporting affidavit and the written submissions. It is the submission of the respondents that it is now more than five years since the memorandum of appeal was filed and the appellant has taken no step to have the appeal listed for hearing. It was further pointed out that two years have since lapsed after the record of appeal was filed and served yet the appellant has not prosecuted the appeal. The respondents further argued that despite being directed to file submissions in respect of the appeal, the appellant has blatantly refused to do so. The respondents urged this court to hold that the appellant has lost interest in pursuing this appeal.

3. The respondents' submissions and assertions have not been controverted by the appellant. This court does have any plausible reason to doubt the veracity of the assertions made by the respondents. It is apparent from the record that this appeal was filed on 12th May 2010 to impugn the decision of Hon. S. N. Riechi, learned Chief Magistrate, delivered on 12th April 2010. By an amended plaint dated 8th August 2006, the respondents herein filed a compensatory suit against the Hon. Attorney General before the Chief Magistrates court for the injuries they sustained in a road traffic accident involving a motor vehicle driven by police officer attached to Githimu Police Station. The learned Chief Magistrate in the end awarded the 1st respondent 106,500/= as general damages and special damages. The 2nd respondent was awarded ksh.186,500/= as general and special damages.

4. The appellant was dissatisfied with the aforementioned decision hence was prompted to file this appeal.

5. The appellant has been challenged through the motion dated 15.2.2016 to show cause why the appeal should not be dismissed for want of prosecution. The appellant has failed to respond to the challenge. The appeal was filed more than five years ago. The appeal was admitted to hearing on 31.5.2015. The record of appeal was filed on 22nd February 2013. The original trial court's file was forwarded to this court on 15.6.2015 pursuant to the letter of request dated 14.5.2015. It would appear all the necessary steps have been met to have the appeal ready for hearing but the appellant appears to have lost interest to pursue this appeal.

6. In the end, I find the motion dated 15th February 2016 to be well founded. It is allowed as prayed. Consequently this appeal is ordered dismissed for want of prosecution with costs to the respondent.

Dated, Signed and Delivered in open court this 25th day of May, 2017.

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent