

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 609 OF 2015

RIFT VALLEY RAILWAYS (K) LIMITED.....APPELLANT/RESPONDENT

V E R S U S

FRANCIS KEBASO NYANG'AU.....RESPONDENT/APPLICANT

RULING

1. Francis Kebaso Nyang'au, the respondent herein took out the motion dated 29.11.2016, in which he sought for the appeal to be dismissed for want of prosecution. The respondent filed an affidavit he swore in support of the motion. When served with the motion, Rift Valley Railways (K) Ltd, the appellant herein, filed grounds of opposition and the replying affidavit of Judith Nduku Matata to oppose the application. When the motion came up for interparres hearing, learned counsels appearing in the matter recorded a consent order to have the application disposed of by written submissions.

2. The background of this dispute is short and straightforward. The respondent filed a compensatory suit before the Chief Magistrate's court against the appellant for the injuries sustained in a road traffic accident which occurred on 13th February 2009. The suit was heard and determined in favour of the respondent in a judgement delivered on 30th November 2015. The appellant was dissatisfied with the decision, hence he preferred this appeal against both liability and quantum.

3. The respondent is now before this court seeking for the appeal to be dismissed for want of prosecution. I have considered the grounds stated on the face of the motion dated 29th January 2017 and the facts deponed in the affidavits filed in support and against the application. I have further considered the rival written submissions. It is the submission of the respondent that since the appellant obtained an order for stay of execution on 18th February 2016, the appellant lost the interest to pursue the appeal to its conclusion. The respondent further pointed out that it is now more than one (1) year since the court was moved and the appellant has failed to have the appeal listed for directions.

4. The appellant has beseeched this court to dismiss the motion arguing that the delay to prosecute the appeal could not be attributed to it. It was pointed out that the appellant has not been supplied with typed proceedings by the trial court despite making the relevant application. The appellant stated that it is eager and interested in prosecuting the appeal.

5. Having considered the rival submissions, it is clear to me that the appellant has not lost interest to prosecute the appeal. The appellant has annexed to the replying affidavit of Judith Nduku Matata various letters addressed to the executive officer requesting for the supply of typed proceedings of the trial court. This assertion is not controverted by the respondent. It is apparent that so far the appellant has not been supplied with typed proceedings hence it is difficult to move an inch further. The appellant has requested to be supplied with proceedings therefore it cannot be said it has lost interest in pursuing the appeal.

6. In the end, I am satisfied that the appellant has given a good explanation as to why the appeal is not yet ready for hearing. The motion dated 29.11.2016 is therefore found to be without merit. It is dismissed with costs to the appellant.

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