

REPUBLIC OF KENYA

THE HIGH COURT OF KENYA

AT NAKURU

CIVIL APPEAL NO. 6 OF 2011

EUNICE AKEYO.....APPELLANT

-VERSUS-

MARIDADI FLOWERS LIMITED.....RESPONDENT

RULING

1. A Notice to Show Cause why the present appeal cannot be dismissed was issued by the Deputy Registrar of this court on 10th October, 2017. The same was issued under **Order 42 Rule 35(2)** of the **Civil Procedure Rules** which states:-

1. Unless within three months after the giving of directions under rule 13 the appeal shall have been set down for hearing by the appellant, the respondent shall be at liberty either to set down the appeal for hearing or to apply by summons for its dismissal for want of prosecution.

2. If, within one year after the service of the memorandum of appeal, the appeal shall not have been set down for hearing, the registrar shall on notice to the parties list the appeal before a judge in chambers for dismissal.

2. The applicant's counsel urged the application on 22nd November 2017. The respondent did not attend court despite service. The applicant's counsel argued that the respondent had not taken any action since filing the appeal on 14th January 2011. She urged that the appeal be dismissed.

3. The overriding interest in civil procedure is to ensure that suits are promptly and justly disposed off. In considering dismissal for want of prosecution, the court is enjoined to consider the period of delay; whether the delay is inordinate, intentional and inexcusable; an explanation if any for the delay; and whether the dismissal, would cause prejudice to the plaintiff. **See Euro Bank Ltd Vs. Shah Munge & Partners 2016 eKLR; Ivita Vs. Kyumbu (1984) KLR 441.**

4. As observed earlier the appellants did not show up to show cause why the appeal should not be dismissed. My perusal of the file confirms that the memorandum of appeal was filed way back on 14th January, 2011. The appeal was admitted on 24th January, 2012 and the Record of Appeal was filed on 3rd February 2011. The appellant's advocates then took out a hearing notice for directions on 15th March 2011. On that date both parties were present. The court noted that the appeal had not been admitted and directed that the appeal be mentioned in the new term.

5. The appellant took no action until 23rd September, 2015 when the respondent's counsel made an application to have the appeal dismissed for want of prosecution. The said application was not prosecuted as parties did not attend court on the hearing date. Subsequently, on 15th September 2016 the respondent moved the court to have the present Notice to Show Cause issued to the appellant.

6. From the above, it is apparent that throughout this period, there has been no action on the part of the appellant. It is clear that the appellant forgot all about her appeal after it was admitted on 24th January

2012. The court is entitled to presume she has lost interest and abandoned the appeal. The inordinate delay not only remains unexplained but continues to leave a matter hanging over the respondent's head. It is my firm conclusion that the said appeal should not continue clogging the court registry. It is dismissed for want of prosecution with costs to the respondent.

Ruling delivered, dated and signed in open court This 30th day of November 2017

R. LAGAT KORIR

JUDGE

In the presence of:

C/A Emojong

N/A for appellant

N/A for respondent