



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISUMU
CIVIL APPEAL NO. 68 OF 2014

E A A (*Minor suing through mother and next friend*)

S A A APPELLANT

VERSUS

SAMWEL OTIENORESPONDENT

**Being an appeal against the whole of judgment by Hon. A.A. Odawo RM delivered on 6/06/2014 in
KISUMU CMCC No. 427 of 2011**

BETWEEN

E A A (*Minor Suing through mother and next friend*)

S A A PLAINTIFF

VERSUS

SAMWEL OTIENO DEFENDANT

JUDGMENT

The appellant's claim for compensation for injuries allegedly sustained in an accident said to have occurred on 19th July 2011 was dismissed by the Lower Court and being dissatisfied the appellant filed this appeal. The Memorandum of Appeal was filed on 18th June 2014 and was duly served, and on 19th January 2015 the appeal was admitted. It was thereafter fixed for directions whereupon on 27th July 2015 Counsels appearing for the parties agreed that the appeal would be canvassed by way of written submissions. Despite several adjournments the Advocate for the appellant has not filed submissions. Even when the Deputy Registrar sent a reminder on 2nd November 2015 only those of the Respondent were received even though the record shows that the Respondent had already filed earlier. To date no submissions have been received from the Appellant's advocate.

This would mean that the appellant has not prosecuted the appeal. It is also akin to what Order 42 rule 20(1) of the Civil Procedure Rules describes as non-attendance of the appellant at the hearing of the appeal. The rule gives the Court power to dismiss the appeal in such circumstances. Here we have an appellant whose Advocate has been reminded by the Court to file submissions but has persisted in neglect to do so. This Court therefore takes it that the appellant is no longer interested in prosecuting the appeal and dismisses it with costs to the Respondent.

It is so ordered.

E. N. MAINA

JUDGE

Signed, dated and delivered this 28th day of January 2016

In the presence of:-

Miss Mwalo for Ouma for Appellant

N/A for the Respondent

CC: Felix