



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**CIVIL APPEAL NUMBER 61 OF 2010**

**PYRETHRUM BOARD OF KENYA.....APPELLANT**

**VERSUS**

**BUDA CAKE AND FEEDS LTD.....RESPONDENT**

*(Being an appeal from the Judgment/Decree of Hon. Wilbroda Juma, Chief Magistrate, Nakuru, delivered on 24<sup>th</sup> February, 2010, in Nakuru CMCC NO. 859 of 2006)*

**JUDGMENT**

On the 3<sup>rd</sup> March 2014, the appeal hereof was admitted for hearing and directions on the hearing of the appeal taken on the 22<sup>nd</sup> October 2014 under **Order 42 Rule 13 of the Civil Procedure Rules** that parties were to file and exchange written submissions. When parties appeared before this court on the 2<sup>nd</sup> July 2015, the appellant had not filed its submissions. It was then that counsel for the appellant intimated to the court that he wished to withdraw from acting for the application.

By his application dated 3<sup>rd</sup> July 2015 and heard on the 27<sup>th</sup> July 2015, the firm of Murimi, Ndumia, Mbogo and Muchila advocates were granted leave to cease acting for the appellant after the court satisfied itself that service of the application had been served upon the appellant. As at this date the Appellant had not filed its submissions on the appeal.

Thereafter, the Respondent took a mention date for purposes of taking a judgment date on the 14<sup>th</sup> December 2015 when the court issued an order that the Appellant be served with a further mention date for the 23<sup>rd</sup> December 2015.

On the 23<sup>rd</sup> December 2015, the court was satisfied by the affidavit of service filed on the 23<sup>rd</sup> December 2015 that the Respondent was duly served with the mention notice on the 16<sup>th</sup> December 2015, but failed to attend court. In the circumstances, the court gave a judgment date for the appeal for the 18<sup>th</sup> January 2016, and a judgment date notice ordered to be served upon the appellant.

The appellant as stated above did not file its written submissions. The Respondent opposed the appeal vide its written submissions dated the 27<sup>th</sup> April 2015.

In the absence of the Appellant's written submissions and there being no grounds and or reasons tendered for its failure to attend court and/or file its submissions as per the directions taken under **Order 42 Rule 13 of the Civil Procedure Rules 2010** on the 22<sup>nd</sup> October 2014, the appeal is hereby dismissed with costs to the Respondent.

**Dated, signed and delivered in open court this 28<sup>th</sup> day of January 2016.**

**JANET MULWA**

**JUDGE**