

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 581 OF 2013

PAUL KITHINJI IKIUGU.....APPELLANT

VERSUS

NTIMA FARMERS CO-OPERATIVE SOCIETY LIMITED.....RESPONDENT

RULING

The respondent/applicant's application dated 11th February 2016 seeks for dismissal of this appeal for want of prosecution. It is brought under Order 42 Rule 35 of the Civil Procedure Rules albeit the cited provisions are different which in any event is non fatal to the application. The applicant also seeks for leave to execute in Nairobi CTC O. 82/2007 plus costs of the appeal and application.

The application is not opposed despite evidence of service upon the appellant/respondent being provided.

I have considered the submissions by Mr Mwarania advocate in support of the application which is based on the grounds on the face of the application and the supporting affidavit of Linet Gatuiru Nkonge sworn on 11th February 2016. I am satisfied that there has been disobedience/violation of the orders of 27th January 2014 issued by the Honourable Ougo J that there be stay of execution on condition that the appeal be heard within the year 2014. It is now two years and two months after the issuance of the said orders and the appellant has not taken any action to have that period enlarged or even to prepare the record of appeal to facilitate admission of the appeal or to have directions taken in readiness for the hearing and disposal of the appeal.

Delay defeats equity and delay is abhorred by Article 159 of the Constitution. In the absence of any explanation why this appeal is still unheard and or steps taken to have it heard despite the availability of the Cooperatives Tribunal file, I hereby exercise my discretion and grant the orders sought in the application dated 11th February 2016 as prayed. The appeal herein is dismissed for want of prosecution and the respondent is at liberty to execute decree in Nairobi CTC No. 82/2007. The respondent/applicant is also awarded costs of this dismissed appeal and costs of the application to be assessed.

Orders accordingly.

Dated, signed and delivered in open court at Nairobi this 19th day of April, 2016

R.E. ABURILI

JUDGE

19/4/2016.

In the presence of Mr Mwarania Counsel for the Respondent/Applicant

N/A for the Appellant/Respondent

CA: Henry