

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CIVIL APPEAL 117 OF 2008

NJIRU MBIRU.....APPELLANT

VERSUS

MICHAEL NGARI MURATHO.....RESPONDENT

RULING

1. This is an application for dismissal of this appeal for want of prosecution, which is brought by the respondent by way of notice of motion and was filed in this court on 11th December 2015. Additionally, the respondent has also sought an order for provision of costs. The application is supported by the grounds on the face of the motion and is anchored in the respondent's supporting affidavit dated 16th December 2015.

2. In his grounds in support of the motion, the respondent has stated that the appeal was filed in 2008 which is now well over 7 years and has not been prosecuted to date. He has also stated that the appellant has not taken any action after filing his appeal. Finally, he has stated that the judgement of the lower court should be upheld.

3. In his supporting affidavit, the applicant has deponed that he has always been ready and willing to attend court to defend his interests in this appeal. He has further deponed that in April 2009, the appellant filed an amended memorandum of appeal, which was served upon him. He has further deponed that he has suffered prejudice since the filing of this appeal, which has highly inconvenienced him. And finally, he has deponed that the court should dismiss this appeal for want of prosecution.

4. The hearing of this application proceeded in the absence of the appellant after I was satisfied that he was properly served and had adequate notice of hearing.

5. I find that the appeal was filed on 11th December 2008. This was followed by an amended memorandum of appeal which was filed on 3rd April 2009. To date, the appellant has not taken any steps to prosecute his appeal for over 7 years. In the circumstances, find that the appellant has lost interest in his appeal and I hereby allow the respondent's application. The appeal is hereby dismissed for want of prosecution.

6. There will be no orders to costs.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **28th day of SEPTEMBER 2016**

In the presence of the respondent and in the absence of the appellant.

Court clerk Njue

J.M. BWONWONGA

JUDGE

18.09.16