



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL APPEAL NO. 591 OF 2013**

**IRENE NJOKI EZEKIEL.....APPELLANT**

**VERSUS**

**EXPRESS TRAVEL LIMITED.....RESPONDENT**

**R U L I N G**

1. The Respondent herein has filed a notice of motion dated 18<sup>th</sup> March, 2016 seeking the dismissal of this appeal for want of prosecution. It is the Respondent's contention that since the filing of the memorandum of appeal on 15<sup>th</sup> November, 2013 which is more than a year ago, the Appellant has not taken any steps to prosecute her appeal.

2. Despite having been served with the motion before this court, the Appellant has not filed a response to it.

3. The applicable law on dismissal of an appeal for want of prosecution is Order 42 Rule 35 of the Civil Procedure Rules. The said provisions provides:

***“35 (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.”***

4. Considering that more than one year after filing memorandum of appeal has lapsed without the appeal being set down for hearing, the particular provision applicable is Order 42 Rule 35 (2). Under the said sub rule, if a year after service of a memorandum of an appeal shall have lapsed without setting the appeal for hearing, the registrar shall on notice to the parties list the appeal before a judge in chambers for dismissal. The said provision is in mandatory terms.

5. While I acknowledge that the provisions call for this court's action at the instance of the Deputy Registrar, I note that this appeal was filed three (3) years back and since then, the Appellant has not taken any step to prosecute the appeal. The application has also been brought under Sections 1A, 1B and 3A in addition to Order 42 Rule 35(2) and Order 51 Rule 1 of the Civil Procedure Rules. The Appellant despite having been served with the application and the hearing notice did not file any response to the application and did not even attend court to defend the application. This could take this to mean that he is no longer interested in his appeal.

6. Under the inherent powers of this court as donated to it by Sections 1A, 1B and 3A of the Civil Procedure Act, I hereby dismiss the appeal for want of prosecution as prayed for in the Notice of Motion dated 18<sup>th</sup> March, 2016. Costs of the application shall be borne by the Appellant.

Dated, signed and delivered at Nairobi this 17<sup>th</sup> day of November, 2016.

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**L NJUGUNA**

**JUDGE**

*In The presence of*

..... *for the Appellant*

..... *for the Respondent*