



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO: 87 OF 2012

P W M .....APPELLANT

VERSUS

R M M.....RESPONDENT

RULING

1. The application dated 4<sup>th</sup> April 2014 seeks dismissal of the suit herein for want of prosecution.
2. It is premised on Order 17 of the Civil Procedure Rules which provides for prosecution of suits.
3. The cause herein is not a suit but an appeal. Appeals are governed by Order 42 of the Civil Procedure Rules. Dismissal of appeals for want of prosecution is provided for under Order 42 rule 35 and not Order 17.
4. Order 42 rule 35 states as follows:-

***“Rule 35(1). Unless within three months after giving of directions under rule 13 the appeal shall have been set down for hearing by the appellant 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.”***

5. The application dated 4<sup>th</sup> April 2014 is not for granting. The appeal herein cannot be dismissed on the basis of the provisions cited in the application. I do here hereby dismiss the application, the respondent shall have costs thereof.

**DATED, SIGNED and DELIVERED at NAIROBI this 30<sup>th</sup> DAY OF January 2015.**

**W. MUSYOKA**

**JUDGE**