



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CIVIL APPEAL NO. 141 OF 2009
JOHN NDUATI MUGO.....1ST APPELLANT
KISUMU SWAN CARRIERS.....2ND APPELLANT
VERSUS
HUSSEIN ALI (A minor suing thro his mother as next friend)
HAWO ALI GUYO.....RESPONDENT

R U L I N G

A notice had been issued on 16.3.2015 for the parties to show cause why this suit should not be dismissed for want of prosecution in terms of order 17 Rule 2 of the Civil Procedure Rules. Cause was to be shown on 13.4.2015.

On 13.4.2015, Mr. Mwenda, holding brief for Mr. Manthi for the appellant told the Court that the matter could not proceed to be heard as the Lower Court's file had not been forwarded to this Court to enable the Court to admit the appeal. He told court that several letters had been written to the Deputy Registrar. Mr. Mwenda told the Court that the fact that the appellant had filed his record of appeal was evidence of his seriousness in pursuing this appeal. He asked the Court to order that the Lower Court's file be annexed to the Appeal file.

Mr. Muthomi for the Respondent asked the Court to dismiss the appeal as the respondent had been denied the fruits of his Judgment for 5 years without reasonable cause. He submitted that it was the appellant's duty to pursue his case.

I am inclined to agree with Mr. Muthomi that the appellant has been indolent. It is always the primary duty of a plaintiff or an appellant to ensure that the hearing and determination of a suit proceeds diligently. However, in the interests of justice, I find it necessary to allow the appellant to prosecute his case. I issue the following orders.

- 1. The appellant to follow up with the Deputy Registrar annexation of the Lower Court's file to this file within 30 days of today.***
- 2. The Deputy Registrar to have the Lower Court's file annexed to this file within 30 days.***
- 3. The appellant to have his appeal set down for hearing within 60 days of today failing which this court will be at liberty to dismiss this suit in accordance with the Notice to Show Cause dated***

16th March, 2015 issued to the parties.

It is so ordered.

Delivered in Open Court at Meru this 22nd day of April 2015 in the presence of:

Cc. Daniel

Muthomi present for Respondent

Murango Mwenda h/b Manthi Masika for the Appellant

P. M. NJOROGE

JUDGE