



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

HIGH COURT CIVIL APPEAL NUMBER 101 OF 2009

1. AIC POLYTECHNIC.....1ST APPELLANT

2. SIMON CHEGE.....2ND APPELLANT

VERSUS

JOHN KURIA.....RESPONDENT

(An appeal from the Judgment of the Honourable Senior Resident Magistrate Mr. Nduku Njuki delivered at Naivasha on 9th April, 2009 in Naivasha SPMCC No. 19 of 2005.

RULING

The Respondent by his application dated 7th April 2011 and filed on the 12th April 2011 sought an order for the dismissal of the Appellants Appeal filed on the 8th June 2009 for want of prosecution pursuant to provisions of Order 42 rule 35, 51 rule 1 of the Civil Procedure Rules. The application is supported by an affidavit sworn by the applicant on the 7th April 2011, and on grounds that since the 16th November 2009, no action has been taken to prosecute the appeal.

The court was told that the Judgment of the lower court and subject of the appeal has since been executed and the decretal sum released to the Respondent. As such the appeal serves no purpose, and in any event the appeal was filed out of time and the appellants application for leave to file the same out of time was dismissed by the court on the 16th November 2009.

Mr. Nyamwange Advocate told the court that he represents the Auctioneers who are entitled to their charges in the lower court, and costs of the appeal.

I have considered the application and submissions by counsel. As the decree of the lower court and subject of the appeal herein has been satisfied, the continued pendency of the appeal in the court serves no purpose save to add up to the backlog.

As to the Auctioneers charges alleged to be due in the lower court, it is the courts view that the same ought to be followed up in the lower court.

The application dated 7th April 2011 is allowed and this appeal filed on the 18th June 2009 is dismissed for want of prosecution with costs to the Respondent.

It is so so ordered.

Dated signed and delivered in open court this 23rd day of July 2015

JANET MULWA

JUDGE

In the presence of:

Ms. Kerugo holding brief for Nyamwange - for the Auctioneers

Ms. Magana holding brief for Gekong'a for the Applicant

No appearance for the Appellant.

Court clerk - Linah