



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**CIVIL APPEAL NO. 66 OF 2008**

**JANET E.A. OMONDI**

**OCHIENG NYAWARA.....APPELLANT**

**VERSUS**

**MILLICENT OMONDI.....RESPONDENT**

**RULING**

By the Chamber Summons dated 3rd February 2015 the Respondent/Applicant seeks orders for dismissal of this appeal for want of prosecution. He also prays that the costs of this application be provided for.

The application is premised on grounds inter alia that it is now 4 years since this matter was last in Court on 4th October 2010 yet it is one of the overriding objectives of the Civil Procedure Act that matters be disposed temeously and further that litigation must come to an end.

The application is supported by an affidavit sworn by Bruce O. Odeny Advocate on 3rd February 2015 in which he has set out the history of the matter.

The application is not opposed but on the hearing date the Appellant/Respondent was represented by Mr. Ouma who was holding brief for Mr. K'Opot Advocate. Mr. Ouma submitted that the appeal had been compromised and that as such this application ought to be dismissed with no order as to costs.

This was vehemently opposed by Miss Nabifo, Advocate for the Respondent/Applicant who pointed out that there was nothing in the file to suggest the appeal had indeed been compromised and that no evidence of such compromise had been furnished to the Court.

I have considered the application and the rival submissions carefully. This appeal had had a checkered history and the record shows that as far back as 10/5/2010 Aroni J. gave the appellant thirty days to set the appeal down for hearing or else it would stand dismissed. On 4/10/2010 the appellant was back in Court asking for extension of time but this time though very magnanimous Aroni J. ordered that the last application to be allowed to the appellant and further directed that the record of appeal be filed within 30 days. She was again emphatic that if that was not done the appeal would stand dismissed. The record of appeal was filed on 28/10/2010 after which all went quiet until the present application was filed. There is nothing to show that the appeal was ever compromised and as no reasonable explanation has been given for the inaction I am satisfied that the application has merit. It is therefore allowed and as costs follow the event the costs of this application and of the appeal are awarded to the Respondent/Applicant.

It is so ordered

**Signed, dated and delivered at Kisumu this 24th day of September 2015.**

**E. N. MAINA**

**JUDGE**

In presence of:-

Mr. Omondi for Odeny for Respondent/Applicant

N/A for Appellant/Respondent