



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 387 OF 2013

MARIE STOPES-KENYA. APPELLANT

VERSUS

FAITH NYAMBURA. RESPONDENT

RULING

The application before the court is the Notice of Motion dated and filed in court on 4th February, 2015. It seeks dismissal of this appeal dated 9th July, 2013 and filed in court on 10th July, 2013, upon the ground that the appeal has not been prosecuted since it was filed and that such lack of prosecution is a lack of interest in the appeal.

The record shows that the Appellant filed the Record of Appeal on 4th March, 2015 after the application to dismiss had been filed but not prosecuted.

It is noted from the record also that the appeal has since been admitted the 10th March, 2015, the same day the parties argued the application.

Furthermore, the record shows that the parties by consent entered a stay of execution of the decree of the lower court, on condition that the Appellant/Defendants deposit in a joint-interest earning bank account, the decretal sum of Ksh.1,700,000/-. The deposit was duly made.

I have carefully perused and considered the submissions made by both sides for and against dismissal of the appeal. In my view the appeal is not that old. The Appellant has filed the Record of Appeal. The court admitted the same in March, 2015. A little more necessary delay will not prejudice the Respondent much, especially because the decretal sum is safely in a joint-counsel-interest earning account. If the appeal does not succeed, the Respondent will readily obtain the fruits of his judgment.

It is also, however noted, that now that the Record of Appeal is in place, there is no reason why the appeal should not be prosecuted without delay.

As to the issue of interest in the appeal, the Appellant by filing the Record of Appeal, has demonstrated sufficient interest. In the circumstances, all that remains to be done is to fix the appeal for directions and proceed to take a hearing date. That one of the parties against whom the decree had been passed did not appeal was clearly in favour of the Respondent. She must be harbouring some good reason why she has not moved in part or whole for execution against the said party and it is not presently an issue before this court.

The conclusion the court reaches is that this application to dismiss the appeal is not granted at this stage

and is accordingly compromised on the following orders.

ORDERS

1. *The application is refused and dismissed with costs payable by Appellant to the Respondent after taxation or agreement on the same.*
2. *The Appellant shall prosecute the Appeal within 6 months after directions are taken in default the appeal to stand dismissed unless on good grounds the court extends the period.*
3. *Directions of the appeal are hereby fixed on 2nd October, 2015.*

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D A ONYANCHA

JUDGE

Dated and delivered at Nairobi this 18th day of November, 2015.

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JUDGE