

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL APPEAL NO. 20 OF 2006

LOIS TOWON.....APPELLANT

VERSUS

ABDI MOHAMMED.....RESPONDENT

RULING

By the notice of motion dated 14/12/2010, the respondent/applicant seeks the dismissal of this appeal for want of prosecution and costs of the appeal. The application is premised on grounds found on the face of the application and the affidavit of the respondent, Abdi Mohamed who deponed that the appeal was filed in 2006 and since then the record of appeal has never been filed; that on 17/3/2010, the appellant was ordered by the Deputy Registrar to file the record of appeal but so far, nothing has been done. The applicant is of the view that the appellant/respondent has lost interest in the appeal.

The respondent filed a replying affidavit dated 14/6/2011, in which she deponed that she had without success, tried to procure the lower court proceedings from the trial court in Maralal; that upon appointing her advocates, she discovered the file had been brought to this Hon. Court and therefore requested for time to prepare the record of appeal and ventilate her appeal; that the typed proceedings have been received and she has handed them over to the counsel for preparation of the record of appeal.

When the application came up for hearing on 5/5/2014, Mr. Kahiga held brief for Mr. Wambeyi, counsel for the appellant and asked for adjournment to enable him file an application to cease acting for the respondent. The court declined to grant an adjournment because there was no reason why Mr. Wambeyi had not filed the application to cease acting before the hearing date. The hearing date had been taken way back in 11/2/2014 and no doubt Mr. Wambeyi was aware of the hearing date.

This appeal was filed way back in 2006, having arisen from a suit filed in 2005. The appellant filed a reply to this application on 14/6/2011 in which she deponed that she had never received the typed proceedings from the lower court and needed time to compile and file the record of appeal. To date, three years later, no record of appeal has been prepared. Nothing has been done towards preparation of the record or towards prosecution of this appeal. Even after the appellant knew that this application was pending it seems she had not taken interest to instruct her client or find out what has happened to her case since she swore the affidavit in 2011. It is evident the appellant has lost interest in the appeal and there is no good reason why the appeal should continue pending in the court.

I have noted that the application was brought under **Section 3A** of the **Civil Procedure Act** and **Order L Rule 1** instead of **Order 42 Rule 35(1)** of the **Civil Procedure Rules**.

However, considering the laxity on part of the appellant and the injustice being visited on the respondent due to the delay in finalizing this matter, this court exercises its inherent jurisdiction in order to do justice to the parties and dismisses this appeal with costs to the respondent/applicant. It is so ordered.

DATED and DELIVERED this 30th day of May, 2014.

R.P.V. WENDOH

JUDGE

PRESENT:

N/A for the respondent/applicant

N/A for the appellant/respondent

Kennedy – Court Clerk