



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. 843 OF 2006

LUCY WACHUKA MA THENGE1ST APPELLANT

ANDREW KARIUKI2ND APPELLANT

VERSUS

MARY NYAKIO PETER.....RESPONDENT

RULING

1. The application before this Court is a Notice of motion dated 4th December 2013 brought Under Order 42 rule 35(1)(2), Order 51 rule 1 Order 43 rule 3 of the Civil Procedure Rules section 1A, 1B and 3A of the civil Procedure Act.

The applicant seeks the following orders;

- i. That the appeal herein be dismissed for want of prosecution
- ii. That costs for this application and the entire appeal be bourne by the applicants.

2. The application is based on the following grounds;

- i. That the appellants herein have refused failed and or neglected to set down the appeal for hearing or takings steps towards concluding the same.
- ii. That the appeal was filed on 4th December, 2006 and it is now over seven years and has not moved any step.
- iii. That the continued delay in finalizing or taking steps to conclude this appeal is hurting the respondent who has a judgment which has not been keen to prosecute this appeal.
- iv. That the respondent is manifestly clear and evident that the appellants are not keen to prosecute this appeal.
- v. That the respondent should not be held at ransom by the appellants delay in prosecuting their appeal.
- vi. That litigation must come to an end.

3. The application is supported by the sworn affidavit of Mary Nyakio Peter dated 4th December, 2013. She deponed that the Memorandum of Appeal was filed on 4th December, 2006 and served on 6th December, 2006; that the appellants have never bothered to pay for certified copies of proceedings to enable them prepare a record of appeal; that it is over 6 years since the appeal was filed and the appellants are not keen on prosecuting their case against her and that it was un the interest of justice that the appeal be dismissed to alleviate the respondent's appeal.

4. Despite the appellants being served as evidenced by the affidavit of service dated 24th April, 2014 the appellants did not file any affidavits opposing the same or attend Court on 21st May 2014 when the application came for hearing. I have confirmed from the Court file that since the appellant filed the Memorandum of appeal on the 4th December 2006 the appellant has taken no steps to set down the appeal for hearing. It is now more than 7 years since the appeal was filed. The appellant obviously has no interest in prosecuting the appeal, the respondent as a party has waited too long. I therefore, find that the application has merit and dismiss the appeal for want of prosecution. I award the Applicant costs.

Orders accordingly.

Dated, signed and delivered this **28th** Day of **May,**
2014

R.E. OUGO

JUDGE

In the Presence of:-

.....For the Plaintiff/Applicant

.....For the Defendant/Respondent

.....Court Clerk