

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL DIVISION

CIVIL APPEAL NO 893 OF 2005

AVENUE SERVICE STATION (1977) LTD.....APPELLANT

VERSUS

1. SECURICOR SECURITY SERVICE (K) LTD

2. SWALEH ABIERO.....RESPONDENTS

RULING

1. This is an application (**chamber summons dated 22nd October 2013**) by the Respondents for dismissal of the appeal for want of prosecution under **Order 42, rule 35(1)** of the **Civil Procedure Rules, 2010** (the **Rules**). Under that subrule, unless within three months after the giving of directions under **rule 13** of the Order the appeal shall have been set down for hearing by the appellant, the respondent shall be at liberty either to set down the appeal for hearing or to apply by summons for its dismissal for want of prosecution.

2. The Respondents also rely on the inherent power of the court.

3. I have considered the submissions of the learned counsels appearing. I have also perused the court record.

4. Directions under rule 13 aforesaid were given on 22nd June 2011. Thereafter the appeal was fixed for hearing for 14th September 2011. On that day it appears not to have been listed. It was again fixed for hearing for 7th December 2011. It was not heard for reasons appearing on the record. It is the Respondents' case that since that date the Appellant has not taken any steps to prosecute the appeal, a delay of over two (2) years since the present application was filed on 23rd January 2014.

5. The Appellant has not offered any explanation for the delay, notwithstanding that the application was served on 4th March 2014. No grounds of opposition or replying affidavit was filed. At the hearing of the application learned counsel for the Appellant stated that she had no point of law to raise.

6. Given the Appellant's lack of response to the application at hand, it is apparent that it has lost interest in its appeal. There is no reason why it should continue to hang over the heads of the Respondents.

7. In the event the appeal is dismissed with costs for want of prosecution. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 20TH DAY OF MAY 2014

H.P.G.WAWERU

JUDGE

DELIVERED THIS 27TH DAY OF MAY 2014