



IN THE HIGH COURT OF KENYA AT NAIROBI

CIVILL DIVISION

CIVIL APPEAL NO 350 OF 1992

NJERU NDAMBIRIAPPELLANT

VERSUS

NYAGA MWENDIARESPONDENT

DAVID MUGO MWANIKIINTERESTED PARTY

R U L I N G

1. The memorandum of appeal herein was filed on 9th October 1992. On 14th February 2001 the appeal was dismissed for want of prosecution in the presence of counsel for both parties.
2. More than **twelve (12) years** down the line the Appellant has applied by **notice of motion dated 9th September 2013** for an order to set aside the order of dismissal and reinstate the appeal.
3. The Appellant states in his grounds for the application that he has now withdrawn instructions from his advocates and will proceed in person; that he is now ready to prepare the record of appeal as may be directed by the court; and that the delay in acting was occasioned by his advocates. There is a supporting affidavit sworn by him.
4. There are no papers filed in response by the Respondent. It is

not clear if he was served, or whether he is alive or still in the appeal. But there is an Interested Party who has opposed the application by **grounds of opposition filed on 24th March 2014**. Those grounds are that there has been inordinate and inexcusable delay in applying; and that the suit property has since changed hands.

5. In his supporting affidavit the Appellant has offered no explanation for the very long delay in applying. When the court put the question to him at the hearing of his application he answered that he had no money during the 12-year delay.
6. This being essentially an application for review under **Order 45**

of the **Civil Procedure Rules, 2010** (the **Rules**) the Appellant must satisfy the requirements of **rule 1** of that Order. He has not come anywhere near. The application for dismissal for want of prosecution was canvassed *inter-partes* on 14th February 2001.

7. Litigation must come to an end. Even if the Appellant had met

the strict requirements of Order 45, rule 1 of the Rules, which he has not, I would not have woken up the dogs in this case after more than 12 years!

8. The application is entirely without merit. It is dismissed with costs to the Respondents. It is so ordered.

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

H.P.G.WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 27TH DAY OF MAY 2014