



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL APPEAL NO. 117 OF 2010

ATTORNEY GENERAL.....APPELLANT

VERSUS

CLEMENT MWATSAMA.....RESPONDENT

RULING

1. The Respondent in this appeal has filed the Notice of Motion dated 20th February, 2013 seeking to dismiss the appeal for want of prosecution. The application is essentially premised on the grounds that the appellant has taken no step to prosecute his appeal for over three (3) years.
2. The application is supported by the affidavit of Kennedy Asinuli sworn on 20th February, 2013 in which he reiterates the grounds of the application. He contends that the appellant is guilty of inexcusable and inordinate delay and has displayed no interest in prosecuting his appeal.
3. The application is unopposed. The respondent has taken no step to prosecute its appeal. It is in fact noted that he never appeared in court on 21st May, 2013 and 7th October, 2014 when this matter came up and no affidavit has been filed in opposition to this application to explain the delay.
4. The law governing dismissal of an appeal for want of prosecution is in **order 42, rule 35** of the Civil Procedure Rules. it provides as follows:

“35. (1) Unless within three months after the giving of directions under rule 13 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) If, within one year after the service of the memorandum of appeal, the appeal shall not have been set down for hearing, the registrar shall on notice to the parties list the appeal before a judge in chambers for dismissal.”
5. **Sub-rule (2)** allows the respondent to apply for the dismissal of the appeal considering that no action has been taken by the appellant for over a year. I shall reiterate my holding in the case of ***Annah Wanjiku Kagenya v. Cecilia Achieng Nyayieka Kericho HCCA No. 14 of 2012*** that **section 3A** of the **Civil Procedure Act** should come into play to help meet the ends of justice and prevent abuse of the court process.
6. In view of the fact that the judgement the appellant wants to appeal against was entered on 4th March,

2010, the respondent has suffered prejudice by the appellant's failure to prosecute his appeal.

7. For the foregoing reasons, I find merit in the application herein and accordingly make orders as follows:

- a. The appeal is dismissed for want of prosecution.
- b. Costs to the applicant.

Dated, Signed and delivered in open court this 24th of October 2014.

J.K.SERGON

JUDGE

In the presence of:

Asinuli for the Applicant

N/A for the Respondent