



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 446 of 2008

MUIRURI KAMAU

PETER KAMAU MUIRURI

EVANS NGUGI MUIRURI

DAVID KINYANJUI MUIRURI

HARUN NJENGA MUIRURI.....APPELLANTS

VERSUS

TITUS KINYANJUI KAMAU

ESTHER WANJERI NG'ANG'A

SAMUEL KAMAU NJERI.....RESPONDENTS

RULING

1. The Respondents in this appeal has filed the Notice of Motion dated 13th May 2013 seeking to have the stay the orders of the Land Dispute Tribunal, Central Province discharged and appeal dismissed for want of prosecution.
2. The application is premised on the grounds that the appellants have rode on the stay orders since 20th June 2011 yet they have not taken any step to prosecute their appeal. The application is supported by the affidavit of Esther Wanjeri Ng'ang'a sworn on 13th May 2013 in which she reiterates the grounds of the application. She contends that the respondents have not served the applicants with the memorandum of appeal nor prepared the record of appeal.
3. The appellants filed a replying affidavit sworn by Ogoti Nyangena on 9th July 2013. He contends that the appellants requested for copies of the proceedings soon after they lodged the appeal but that they have to-date not been supplied with the proceedings; that this court is yet to give directions on the appeal and urges this court to find this application defective and incompetent.
4. I have considered the grounds set out on the face of the motion and the facts deponed in the affidavits filed for and against the motion plus the rival submissions. In their submissions Counsels reiterated the averments in the affidavits. What lies for this court's consideration is whether or not there has been inordinate and inexcusable delay in prosecuting the appeal.
5. This appeal was filed on 22nd August, 2008. Upon filing the appeal, the appellant was under duty to cause this matter to be listed for directions under **section 79B** of the **Civil Procedure Act**. By the letters annexed to the replying affidavit, the appellant has demonstrated that they made attempts to list the matter for directions. The appellant stated that it has never received

proceedings of the tribunal to date. I find the appellant to have sufficiently explained the cause of delay. It is worth noting that this appeal has been pending indefinitely for close to five years now. It is therefore unjust to leave the respondent hanging in this matter indefinitely. Its pendency is prejudicial to the respondent. Considering, however, that this is a land matter which is close to the heart of the parties, it is important that it be heard conclusively. In the circumstances I disallow the application on the following terms:

- a. The appellant be supplied with the proceedings of the tribunal within fourteen (14) days from this date.
- b. The parties do take a date for directions at the registry on a priority basis.
- c. Costs shall be in the cause.

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

J.K.SERGON

JUDGE

In the presence of:

N/A Nyangena for the Appellant

Njuguna for the Respondent