

REPUBLIC OF KENYA

High Court at Nakuru

Civil Appeal 80 of 2007

MAINA NDERITU.....APPELLANT
VERSUS
JAMES MWAURA MBUGUA.....RESPONDENT

RULING

This appeal was filed on 17/5/2007. On 25/7/2011, the court issued an order reinstating the appeal and allowed the appellant 90 days within which to prosecute the appeal.

On 28/8/2012, the court issued a notice on the appellant to show cause why the appeal cannot be dismissed for want of prosecution. The appellant filed a replying affidavit in which he tries to explain why the appeal should not be dismissed. It is the appellant's case that a bunch of receipts were produced in the lower court, as exhibits, a carton full. They were misplaced at Nyahururu Law Courts and that though the record of appeal has been prepared and served, the exhibits had not been released by Nyahururu Law Courts; That following the notice to show cause, the exhibits have been found, and he is in the process of photocopying them so that the appeal can proceed to hearing. He requested for 21 days.

Mr. Kerago, counsel for the respondent supported the notice to show cause as there is no evidence that the appellant has been attempting to get the exhibits.

In my earlier ruling dated 25/11/2011, the issue of missing exhibits in the lower court featured. It seems the exhibits have been an issue in the delay in filing of the record of appeal and subsequently the fixing of the appeal for hearing. Now that the exhibits have been found, I direct that the appeal be fixed for hearing within the next 90 days in default the appeal stands dismissed. Costs of notice to show cause will abide the appeal.

DATED and DELIVERED this 23rd day of January, 2013.

R.P.V. WENDOH
JUDGE

PRESENT:

N/A for the appellant
N/A for the respondent
Kennedy – Court Clerk