

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Appeal 237 of 2003

UNI PLASTICS LTD. APPELLANT

VERSUS

VIGITA MUBUA MULI. RESPONDENT

RULING

The application before the court is a Notice of Motion dated 25th May, 2012. It was filed by the Respondent against the Appellant and seeks dismissal of the appeal for want of prosecution. The application is opposed.

The appeal arose from a money decree the sum of which was deposited in an interest-earning account out of a judgment delivered by the lower court, way back on 17th April 2003, in RMCC No 10672 of 1999. A record of Appeal was filed in court on 20th July, 2010. No directions have been taken. The lower court record had not been brought although it was called for on 7th August, 2006.

There is no doubt that there has been long delay in attempting to bring the appeal to a hearing and it would be futile for the Appellant to claim that the delay was not undue and inordinate. Ten years is not a short time.

However, little will be achieved by dismissing the appeal although the Respondent has indeed been prevented from enjoying her judgment sum. The court will, therefore, nevertheless show its displeasure by attaching conditions to the saving of this appeal.

ORDERS

- 1. This appeal is fixed for directions on 12th day of April 2013.**
- 2. The Deputy Registrar shall call for the lower court's original record to reach this court before 9th day of April 2013.**
- 3. This appeal shall be prosecuted within 4 months i.e. on or before 30th July, 2013 in default of which, it shall automatically stand dismissed.**
- 4. This application is hereby dismissed with no order as to costs.**

Dated and delivered at Nairobi this 11th day of March, 2013.

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JUDGE