



REPUBLIC OF KENYA

High Court at Machakos

Civil Appeal 21 of 2003

1. MAKAU KASIMU

2. MUEKE MBUVI

3. TITO MBUVI APPELLANTS/RESPONDENTS
VERSUS

MAKUNZA WATUTA RESPONDENT/APPLICANT

(Being an appeal from the Ruling of the Land Disputes Appeals Committee in Embu Case No. 15 of 2002 dated 19th

December 2002)

(Before B. Thurania Jaden J)

RULING

The application dated 26/3/2012 is brought under **Order 42 rule 35 (1)** of the **Civil Procedure Rules**.

The Applicant seeks orders that the Appellants' appeal herein be dismissed for want of prosecution.

The application is supported by the affidavit sworn by the Applicant **Makunza Watuta** on 26/3/2012.

The gist of the application is that the Appellants have not taken any steps to set the appeal for hearing since 18/3/2010 when directions were given by the court. That the appeal has been pending for the last nine years and therefore that Appellants inertia can be interpreted as lack of interest in the appeal.

The application is opposed to as per the replying affidavit sworn on 10/7/2012. The said affidavit blames the non-fixing of the appeal for hearing on the non availability/misplacement of the court file.

A perusal of the court file shows that the appeal herein was dismissed for want of prosecution on 23/2/07 by **Hon. Justice Sitati** but the appeal was reinstated on 18/12/08 by **Hon. Justice Lenaola**. The record of appeal was complied following deadlines imposed by the court on 30/6/09 and on 24/9/09.

Prior to the filing of the application at hand, the appeal was fixed for directions on 24/6/10. No steps were taken thereafter in this appeal up to the date of the filing of the instant application. Although the Appellant blames the court for the misplacement or non-availability of the file, no letters have been exhibited to show that any requests or complaints were made to the court if the file was indeed

misplaced. The Appellants have not demonstrated any seriousness in fixing their appeal for hearing. The Applicants on the other hand, do not seem to have taken any attempts to fix a hearing date.

In the interest of justice, I decline to allow the application for dismissal. The Appellants are to move to have the appeal fixed for hearing without further delay. Costs of this application to go to the Applicants in any event.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 30th day of May 2013.

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B. THURANIRA JADEN

JUDGE