

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NUMBER 193 OF 2011

LEAVES (K) LIMITED. APPELLANT/RESPONDENT

VERSUS

PETER ONDIMU NYABWARI. RESPONDENT/APPLICANT

ARULING

This application before the court is a Notice of Motion dated 14th August, 2012. It was filed by the Respondent/decreed holder and seeks the dismissal of the appeal for want of prosecution.

The Appellant does not deny the fact that the appeal has not been set down for a hearing since the 3rd May, 2011, which is a period more than three months. It however, argues that the delay arose from the fact that the certified proceedings, judgment and orders, copy had not been availed to it by the court after the relevant requests had been made. It states that once the same were received after 29th August, 2012, the Appellant proceeded to bind, file and serve the record of Appeal. That it is now waiting for directions after admission of the appeal by court.

I have considered the appeal, keeping in mind that the Respondent has a decree whose fruits he is entitled to enjoy. However, the period since the decree was issued is not inordinately long. The Appellant could not also fix the appeal for a hearing before the same was admitted by the court and directions of the appeal be taken. While it may therefore be said that there has been a slow-down by the Appellant lately, it nevertheless cannot be argued that the Appellant has gone to sleep on.

In the circumstances this application has no merit and should be dismissed. Since the Record of Appeal has been filed however, the court will immediately admit the appeal and fix it for directions. Thereafter there should be no excuse for further delay.

Orders:

1. *Application to dismiss for want of prosecution is hereby dismissed with costs.*
2. *The Appellant shall prosecute the appeal within eight (8) months or the appeal shall automatically stand dismissed.*
3. *The Appeal is hereby admitted to a hearing.*

Dated and delivered at Nairobi the 27th day of November, 2013.

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D A ONYANCHA

JUDGE