

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL APPEAL 101 OF 2008

DANIEL KARARI.....APPELLANT

VERSUS

BIGOT FLOWERS (K) LTD.....RESPONDENT

RULING

This appeal was filed on 12/6/2009. Since then the appellant has not taken any steps towards its prosecution. On 14/9/2011, the Deputy Registrar issued a Notice to the appellant to show cause why the appeal cannot be dismissed for want of prosecution pursuant to **Order 42 Rule 35(2)** of the **Civil Procedure Rules 2010**. George Gisore Mboga, counsel for the appellant has filed a replying affidavit urging the court not to dismiss the appeal because the efforts to prosecute the appeal have been frustrated by the Registry of the Lower Court as they have refused to supply him with a copy of the judgment and proceedings; that on 20/11/08, the applicant paid a deposit for the proceedings (GGM2) and despite request for copies of the proceedings and judgment, none have been supplied and that in the interest of justice, the appeal should not be dismissed.

Ms Wanjiru, counsel for the respondent urged the court to dismiss the appeal.

After the appeal was filed, the appellant's counsel addressed the letter dated 18/7/2008 requesting for proceedings. Since then it is over 3 years since any effort was made to remind the court of the request for proceedings. Though the counsel indicated that they paid a deposit for the proceedings, there was no such evidence. Besides even if it was due it was in 2008 and it is over 3 years since the payment.

When this Notice To Show Cause came up for hearing on 18/10/2011, the appellant's counsel was given till 17/11/2011 to file a replying affidavit. Even within that period the appellant's counsel never made any effort towards procuring the typed proceedings and judgment. The appellant has not been diligent and so far, it has not been demonstrated that any effort has been made to have the appeal prosecuted. For that reason the appeal is hereby dismissed for want of prosecution. Costs to the respondent.

DATED and DELIVERED this 20th day of July, 2012.

R.P.V. WENDOH
JUDGE

PRESENT:

N/A for the appellant.

Ms Wanjiru for the respondent.

Kennedy – Court Clerk.