

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL APPEAL 100 OF 2008

MOSES LUBAKWAAPPELLANT

VERSUS

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

RULING

This appeal was filed by Moses Lubakwa on 12/6/08 against Bigot Flowers (K) Ltd. On 14/9/2011, the Deputy Registrar issued a Notice to the appellant to show cause, pursuant to **Order 17 Rule 2**, for reasons that since the appeal was filed the appellant has not taken any steps towards its prosecution. When the Notice To Show Cause came up for hearing on 18/10/2011, the respondent requested for time to file a response, and through the firm of Mboga Advocate, George Gisore Mbgoga filed a replying affidavit dated 10/4/2011 in which the NTSC is opposed. It was deponed that the inability to proceed with the appeal is not intentional; that the appeal arises from a dismissal order made in SPMCC No. 1126/05 yet the appellant was not party to those proceedings; that efforts to proceed with the appeal have been frustrated by the lower court registry which has refused or failed to supply the appellant with a copy of the documents and typed proceedings to enable the appellant/respondent prepare the record of appeal, That a deposit of Kshs.60/- was made (GGM2) on 20/11/2008 to facilitate the typing of proceedings and a letter dated 18/7/2008 requesting for the proceedings but there has been no response.

Ms Wanjiru holding brief for Mr. Nyachoti urged the court to dismiss the appeal.

The letter dated 18/7/08 requesting for typed proceedings and judgment was written about a month after the filing of this appeal. The deposit of Kshs.60/- was then made in November 2008. No further effort has been made by the appellant towards the prosecution of this appeal, the last effort having been made in November 2008, over 3 years ago. Since the NTSC was issued by the court on 18/10/2011, till it was heard on 17/11/2011, there is no evidence that any effort has been made by the appellant to procure the proceedings in order to prepare the record of appeal. The appellant is not serious and has not acted diligently. I find no merit in the replying affidavit and dismiss the appeal 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.