

REPUBLIC OF KENYA

High Court at Nakuru

Civil Appeal 229 of 2010

JOSEPH MWANGI MBUGUA APPELLANT

VERSUS

CROWN FOODS LIMITED RESPONDENT

RULING

This appeal was filed on 24/8/2010. Since then the appellant has not taken any steps towards its prosecution. The court issued a Notice on the appellant to Show Cause why the appeal cannot be dismissed under, **Order 42 Rule 35 (2)** of the **Civil Procedure Rules**. Upon service of the Notice to Show Cause, the appellant, Joseph Mwangi Mbugua, filed a replying affidavit. He deponed that judgment of the lower court was determined in his favor but he was dissatisfied with its terms. He instructed his advocate to file an appeal which he duly obliged. However there has been a delay in obtaining the typed proceedings of the lower court and this rendered it impossible to prepare a record of appeal. He was advised by his advocate that this court has the discretion to direct that the proceedings be prepared and the appeal set down for hearing. He prays to be allowed to proceed with the appeal as the long delay has prejudiced him from enjoying the fruits of the judgment.

I have considered the replying affidavit of Mr. Mwangi and the reasons given for the delay in filing the record of appeal and setting down the appeal for hearing. Mr. Gekonge, counsel for the appellant, exhibited letters written to the Chief Magistrate, Nakuru, requesting to be supplied with the typed proceedings. The letters do not bear the stamp of the court and there is no evidence that such letters were received by the court. The appellant has now shown that he is still interested in the prosecution of the appeal. Since they have appeared, the court will exercise its discretion and direct that the Executive Officer do avail to the appellant the typed proceedings of the lower court in Nakuru CMCC No. 1221 of 2006 within 30 days from the date hereof and the appellant do prepare the record, take directions and set down the appeal for hearing with 90 days from the date of receipt of the typed proceedings failing which the appeal will stand dismissed.

The appellant to bear costs of the Notice to Show Cause.

DATED and DELIVERED this 7th day of December, 2012.

**R.P.V. WENDOH
JUDGE**

PRESENT:

Mr. Odhimabo holding brief for Mr. Gekongafor the appellant

N/A for the respondent

Kennedy – Court Clerk