



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
CIVIL APPEAL NO. 107 OF 2007

MATANYA ESTATE LIMITED.....APPELLANT/RESPONDENT

VERSUS

ANTHONY BENSON WANYEKI GATOTO.....RESPONDENT/APPLICANT
THE DISTRICT LANDS REGISTRAR NYERI.....RESPONDENT

RULING

Pursuant to the provisions of *Order XLI rule 31* of the Civil Procedure Rules, Anthony Benson Wanyeki Gatoto, took out the Summons dated 9th August 2010 in which he applied for the appeal to be dismissed for want of prosecution. The Applicant swore an affidavit in support of the motion. The Appellant filed grounds of opposition to resist the Motion.

The main ground raised and argued on appeal is to the effect that the appeal was admitted to hearing on 16th March 2010 and the Appellant has taken no steps to prosecute the appeal nor comply with the provisions of *Order XLI rule 8B* of the Civil Procedure Rules. In short, it is alleged that the Appellant has lost interest to pursue the appeal. The Appellant admitted that there was a delay to prosecute the appeal. It however, beseeched the court to apply the oxygen principle to spare the appeal.

It is not in doubt that under *Order XLI rule 31 (2)* of the Civil Procedure Rules, that, a Respondent is entitled to apply for the appeal to be dismissed if three months pass before the appeal is listed for hearing. The record shows that directions were taken about 4 months before the motion was filed. There was a delay which was not explained. The Appellant was enjoined to give reasons why the Motion should not be allowed, but it chose not to do so. I have absolutely no reason why I should deny the 1st Respondent that right. I am convinced the Appellant has lost the interest to pursue this appeal. The same is ordered dismissed for want of prosecution with costs to the 1st Respondent.

Dated and delivered at Nyeri this 1st day of April 2011.

J. K. SERGON
JUDGE

In open court in the presence of Mr. Mahan for the Respondent N/A for Ng'ang'a for Appellant.

J.K. SERGON
JUDGE