



1. *Civil Appeal*
2. *Civil Practice and Procedure*
3. *Subject of Subordinate Court case:*

- i. *Contract*
- ii. *Employer/Employee*
- iii. *Employee/plaintiff/employment unlawfully terminated*
- iv. *Court awards entitlement for wrongful dismissal*

dismissal

4. *Appeal*

deposits Kshs.150,000/= security.

admitted on 30 May 2007.

appeal 9 October 2009 Okwengu J.

- i. *Employer/original defendant appeals and*
- ii. *Parties go pro direction after appeal is*
- iii. *Further directions to file complete record of*
- iv. *After 7 months, no action taken by appellant.*

5. *Applicant*

1A, 1B of the Civil Procedure Act Cap 21 and all other enabling provisions of law, to have appeal dismissed.

- i. *Application filed under Section 3A, Section*
- ii. *Application opposed.*

6. *Held:*

- i. *Application dismissed.*

7. *Case Law*

8. *Advocates:*

Advocates for the appellant

- i. *J. K. Mwangi instructed by M/s J. K. Mwangi*

Magee & Co. Advocates for the Respondent

- ii. *R. M Muchika instructed by M/s Mugee Wa*

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

CIVIL APPEAL NO. 541 OF 2005

TELCOM KENYA LIMITED.....APPELLANT/RESPONDENT

VERSUS

DAVID MURIITHI KAIGURI.....RESPONDENT/APPLICANT

(ALIAS DAVID MURIITHI KAIGORI)

RULING

(Dismissal of Appeal for want of prosecution
Section 3A,1A, 1B civil Procedure Act)

I. INTRODUCTION

1. The subject of the subordinate Court case is one of an alleged employment contract. The applicant/original plaintiff/respondent was employed by the respondent/original defendant/appellant. His service was alleged to have been wrongfully terminated. The magistrate court found that the termination was unlawful and awarded dues to up to Kshs.120,594.60 plus costs as entitlement to the employee (14 July 2005).
2. Being dissatisfied with this decision from Kerugoya Courts, the employer appealed to the High Court at Nairobi on 28 July 2005. The appeal was admitted on 30 May 2007 for hearing. Directions was given on 9 October 2009 (Okwengu J.) in which further documents/exhibits was required to be filed in the bundle of appeal records. No action was taken for 7 months. The employee then filed the application before court for orders to dismiss the appeal for lack of prosecution.

II. APPLICATION DATED NOTICE OF MOTION 12 APRIL 2010

3. The application was brought under Section 3A, 1A & 1B of the Civil Procedure Rules. It sought orders for dismissal on grounds that no action or the appeal had been taken.
4. This application opposed
5. For an appeal to be dismissed for want of prosecution, the former (Order XLVI Rule 32 Rule 1 & 2) Civil Procedure Rules would apply. Rule 1 would deal with a situation when directions had been given under Order Civil Rule 8 civil Procedure Rules (now Order 42 Rule 35(1) Civil Procedure Rules) then, if no action has been taken for 3 months, then the respondent is permitted to file an application by way of summons for the dismiss of the appeal for want of prosecution or would set down the appeal for hearing.
6. The other situation is found in Sub-rule 2. This is where upon service of the Memorandum of Appeal upon the respondent the appellant fails to move the file or set the same down for Hearing, then the file after 12 months would be placed before the Hon. Judge for dismissal by the Deputy Registrar no application is filed but notice to both parties is given.
7. In the application before me, directions were incomplete as of October 2009. The appellant required to confirm before the Hon. Judge that the further directions had been complied with. The alternative was to wait for 12 months to have the Registrar dismiss the appeal by placing the file before the Hon. Judge.
8. In this application a period of 7 months had lapsed and no action had been taken. This explains sections of the Orders used of Section 3A, 1A & 1B of the Civil Procedure Act instead of former Order 41 Rule 35 (1 & 2) Civil Procedure Rules.
9. This application is accordingly dismissed as not being within the law with costs to the Respondent.

RULING DATED THIS 31ST DAY OF MAY 2011 AT NAIROBI

M. A. ANG'AWA
JUDGE

Advocates:

- i. J. K. Mwangi instructed by M/s J. K. Mwangi Advocates for the appellant
- ii. R. M Muchika instructed by M/s Mugee Wa Magee & Co. Advocates for the Respondent