



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CIVIL APPEAL NO. 33 OF 2006

DAVID NJOGU KAMAU.....APPELLANT

VERSUS

JAMES MANASSEE KEGODE (Suing as the Legal Representative of the Estate of

FREDRICK AMBANI ODINGO.....RESPONDENT

RULING

This appeal was filed on 1st March 2006. So far, no steps have been taken towards its prosecution. On 27th April 2011, the court took out a Notice to Show Cause to the appellant to show cause why the appeal cannot be dismissed for want of prosecution.

Mrs. Gatei, counsel for the Appellant has sworn an affidavit requesting the court not to dismiss the appeal for reasons that **Molo SRMC No. 33 of 2000** has never been availed despite request and inquiries at the registry. She exhibited **PMG1**, a letter dated 21st May 2010 and addressed to the Deputy Registrar, Nakuru asking that he to facilitates availability of the file. She also exhibited a letter dated 20th December 2007 requesting for exhibits and submissions in preparation for the record of appeal but to no avail. She depones to having prepared the record of appeal but due to circumstances beyond the appellants' control, they have not been able to file the record of appeal.

Since the appeal was filed on 1st March 2006, the appellant's counsel wrote the first letter to the Deputy Registrar, Nakuru on 20th December, 2007 requesting for exhibits and submissions. There was no indication that the file was missing. That letter was written nearly 2 years after the filing of the appeal. From 2007, nothing was done till 21st May 2010 when the appellant again wrote a letter claiming that the **Molo SRMC No. 213 of 2000** was missing. The file is available. It is over 2 years from 2010, when the appellant attempted to take any steps in the matter.

The Appellant is enjoying a stay of the Judgment and in my view, the appellant has really made no efforts towards prosecuting this appeal. The suit was filed in 2000, judgment delivered in 2006, and the appeal has been lying dormant for the last 5 years. The Respondent has a right to enjoy the fruits of his judgment just as the appellant has a right of appeal.

I find no good reason given to warrant the appellant being allowed anymore time to prosecute the appeal. If the court had not issued the notice to show cause,, nothing was going to happen. I hereby

decline to allow the appellant more time to prosecute the appeal and the appeal is dismissed for want of prosecution.

DATED and DELIVERED this 13th day of May 2011.

R. P. V. WENDOH

JUDGE

PRESENT:

Mrs. Gatei for Appellant
No appearance for Respondent
Kennedy – Court Clerk