



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

CIVIL APPEAL 36 OF 2000

SUSAN WANGARI MWANGI.....APPELLANT

VERSUS

NANGENYE GATONYE WARAGANIA.....RESPONDENT

RULING

In the Notice of Motion dated 22nd March 2011, **Susan Wangari Mwangi**, the appellant herein, applied for the following orders:

- (a) This application be certified as urgent and service be dispensed with at the hearing of the first instance.**
- (b) There be a stay of further proceedings in Murang'a P.M.C.C. Civil Suit No. 228 of 199 till this application is heard and determined.**
- (c) This appeal be re-admitted for hearing and be heard on priority basis.**
- (d) Costs of this application be in the cause.**
- (e) Any other or better relief this honourable court may deem fit to grant.**

The Appellant filed an affidavit she swore in support of the Motion. **Nangenyte Gatonye Waragania**, the Respondent herein, filed a replying affidavit of J. N. Kirubi to oppose the Motion.

The Appellant argued that this appeal was dismissed for want of prosecution because he had left for Rift Valley Province to join her children who were affected by the post election violence of 2007/2008. she also claimed that she contracted a strange disease which immobilized her from 2009 to 2010. The Appellant alleged that she returned home in 2011 only to learn from her advocate that this appeal had been dismissed. She stated that she had not lost interest in the appeal.

The Respondent urged this Court to dismiss the Motion because no good reasons were given to justify the failure to attend Court nor prosecute the appeal. It was also argued that the Motion was filed after an inordinate delay. It is the respondent's argument that the Appellant was woken up from his slumber when the respondent caused the Executive Officer of the Court to sign the relevant documents to subdivide and transfer **LOC. 19/KIAWAMBOGO/806**. The Respondent stated that the Appellant is guilty of laches and indolence.

I have considered the rival submissions and the material placed before me. The history of this appeal started when the Respondent herein filed a suit against the Appellant and another to recover **LOC. 19/KIAWAMBOGO/806** vide **Murang'a P.M.C.C.C. NO. 228 of 1999**. In the end the Respondent was awarded 3 acres to be excised from the aforesaid parcel of land. The Appellant was dissatisfied hence this

appeal. The appeal was dismissed on 22nd March 2010 for want of attendance on the part of the Appellant and prosecution. I have critically looked at the reasons advanced for the Appellant. She has basically stated that she was away in Rift Valley to attend to her children who were affected by the post election violence. She has not explained the reasons which made Mr. Kimwere, her advocate, fail to attend court during the hearing of the Appeal. To begin with, it was not necessary for her to be in Court to prosecute the appeal. Her advocate could have as well prosecuted the appeal in her absence. On the date of the hearing of the appeal, Mr. Kimwere merely instructed Mr. Gacheru to hold his brief with instructions limited to adjourning the hearing of the appeal. This Court considered and dismissed the application for adjournment. I regret to state also that the Appellant has not given plausible reasons why the appeal was not prosecuted for many years. The appeal was filed on 4th May 2000. It is obvious that there was an inordinate delay to prosecute the Appeal. In the end, I see no merit in the Motion. The same is ordered dismissed with costs to the Respondent.

Dated and delivered at Nyeri this 14th day of October 2011..

J. K. SERGON
JUDGE

In open court in the presence of Mr. Gacheru holding brief Kirubi for Respondent and no appearance for Kimwere for Appellant.