



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT BUNGOMA**

**CIVIL APPEAL NO.82 OF 1997**

**MOHAMED BIN ASMAN.....APPELLANT**

**=VERSUS=**

**SAINA NASAMBU NYONGESA.....RESPONDENT**

**26.9.2011**

In Chambers

Before: Onyancha, Judge

Mutai – in attendance

**Court:**

On 25.5.2011 the Counsel for the appellant Mr. Wanyama and Mr. Kiarie for respondent appeared before me and Mr. Wanyama confirmed to the court that they each had filed their written submissions in the process of hearing the pending appeal. I have however properly checked the file record of this appeal and can confirm that while the Respondent's submissions are in the file, those of the appellant are not. It is difficult for the court, accordingly, to write the intended judgement.

I have examined the record and find that this appeal was filed in 1997. Comments from time to time in the record suggest that appellant was not at any given time anxious to prosecute the appeal. Indeed the Respondent made several complaints against the obstructive conduct of the appellant. The court also, especially recently, tended to push the appellant through his advocate to bring the litigation to some end. The court also noticed that some court staff tended to be obstructive to the process of attempting to bring the appeal to a hearing.

It is in those surroundings that the court, now finds that the appellant's Counsel may not have filed his written submissions. If he did, a member of staff must have assisted in removing it from the record to frustrate the finalization of the appeal and delay further the ends of justice.

I have carefully considered this agonizing situation. The finalization of this appeal should not be delayed any further. There appear two possible ways of moving forward. One, is to dismiss the appeal for want of prosecution because the appellant, having been given an opportunity to argue his appeal, failed to do so.

Second, the court can proceed to base its consideration of the appeal on the record as it is without appellant's submissions. Either way may not be the ideal method, but it is time for this appeal to be brought to an end.

I have considered the alternatives. I am of the view that for this appeal, dismissal would be more appropriate taking into account the conduct of the appellant or his Counsel, all along.

**Order:** The appeal is dismissed for want of prosecution with costs to the Respondent. Orders

accordingly.

Dated and delivered at Bungoma this 10<sup>th</sup> day of Oct 2011.

D.A. ONYANCHA  
JUDGE.