

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL APPEAL 133 OF 2002

PLY & PANEL LIMITED.....APPELLANT

VERSUS

WELLINGTON W. LUTTA.....RESPONDENT

The applicant in the Chamber Summons dated 13th October, 2008 seeks orders for the dismissal of the appeal filed herein on 3rd August, 2002 and prays that the decretal sum held in Account No. 300-0003197 at Housing Finance Company of Kenya in the joint names of the advocates herein be released to the Respondent/Decree-Holder.

The applicant contends that the Appellant has ignored, refused and/or neglected to set the appeal down for hearing for 6 years, a period the applicant considers to be inordinately long and that the Appellant has shown no signs of any intention to set the appeal down for hearing any time soon.

The application is supported by the Respondent's advocate's affidavit of 13th October, 2009 in which he depones that directions for the hearing of the appeal were issued on 12th June, 2007, as is evidenced by the appellant's letter of 27th March, 2008 annexed to the said affidavit as annexure "WW1".

The application is opposed on the Grounds of Opposition dated and filed on 15th January, 2009 in which the Appellants cite the several problems encountered in their attempts to file the record of appeal and to have the same set down for hearing. The appellants have submitted in addition to the above grounds that negotiations have been gone into in an attempt to settle the appeal, which is borne out by the contents of annexure "WW1".

I am of the considered view that the Appellant/respondent's explanation for the delays herein is reasonable and I have no reason to find that they have lost interest in the appeal. The applicant's own annexure "WW1" clearly speaks against the application, which I consider to have been overtaken by events. The same is hereby dismissed. The applicant shall, nonetheless, have thrown away costs.

The Deputy Registrar, Nakuru High Court is hereby directed to make available the lower court's file for appeal purposes and to facilitate the taking of an early hearing date within the next 21 days.

Orders accordingly.

Dated, signed and delivered at Nakuru this 20th day of May 2009

M. G. MUGO

JUDGE