



MUCHIRI MUHUNYO ..... APPELLANT

VS.

MWANGI MUHUNYO ..... RESPONDENT

**RULING**

The respondent moved the court by way of Chamber Summons for orders that the appeal filed on 28<sup>th</sup> May, 2001 by the appellant be dismissed for want of prosecution. The grounds upon which the said order is sought are that, since the filing of the appeal, a period of more than one year has lapsed and no steps have been taken to prosecute the same. Secondly, the respondent/applicant has not been able to execute the lower court order due to the said pending appeal and thirdly, there have been several applications under certificate of urgency all of which have been dismissed.

I have gone through the record and there are grounds of opposition which were filed by the respondent/appellant to the effect that there has been some attempt to negotiate an out of court settlement which has not been exhausted. The other reason is that this matter involves land and in the interest of justice, the appellant/respondent should be allowed to prosecute his appeal.

One question that arises in the record before me is whether or not this appeal is indeed ready for hearing. I note that no directions have been taken and actually there is no record of appeal that is even ready to move the court to make any orders as to the hearing thereof.

The parties herein appeared before Mutungi J who reserved the ruling on 9<sup>th</sup> October, 2006. Regrettably the learned judge may have overlooked this issue because as at the time of his retirement about 3 years thereafter, this ruling had not been delivered. I agree that the subject matter herein is land and that some caution must be exercised before a drastic order such as dismissal is given to any applicant. I also bear in mind that the taking of directions or any other steps leading to the hearing of the appeal are the sole responsibility of counsel on record and parties rarely know of any such steps before hearing the appeal. Going by those observations, I am persuaded to maintain this appeal on record such that the parties have an opportunity to canvas the issues at the hearing.

I am therefore going to allow the appeal to be prosecuted on the following grounds:

- (i) The appellant shall prepare a record of appeal and seek directions within 30 days of today.**
- (ii) In default the appeal shall stand dismissed with costs to the respondent.**

Orders accordingly.

*Dated, signed and delivered at Nairobi this 22<sup>nd</sup> day of October, 2009.*

**A. MBOGHOLI MSAGHA**

**JUDGE**