

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT EMBU

CIVIL APPEAL 24 OF 2000

NJOKA TANNERS LTD.....APPLICANT

VERSUS

CATHERINE KAGWIRIA.....RESPONDENT

RULING

The Respondent in this appeal has moved the court seeking the dismissal of this appeal for want of prosecution. He has deponed that the appeal was filed in 2000 and admitted in 2001. Directions were taken on 5/3/2001 but since that time, the Appellant has not moved this court for the appeal to be heard thus necessitating his application.

I have considered the application along with the rival affidavits. I have also given due consideration to counsel's oral submissions in court. It cannot be disputed that the appeal has actually taken too long to be heard what I have not been able to establish from the record is whether there was any execution or depositing of the decretal amount in court. I note however that when a party who is charged with the responsibility of fixing his case for hearing drags his feet, the other party can always fix the matter for hearing and serve the hearing notice on the sleeping party. If this fails to nudge the sleeping party into action, then the respondent would have a good justification to ask the court to dismiss the matter. Even the law gives this as the first option. As rightly submitted by Mr. Muriithi therefore, the Respondent could have fixed the appeal for hearing themselves before moving the court to dismiss the appeal. Having not done so and since counsel for the appellant says that they are still interested in pursuing this appeal, I will give them a last chance to do so.

The application dated 9/4/2008 is therefore dismissed with no order as to costs. Appellant to fix the appeal for hearing within 10 days from the date hereof failing which the court will dismiss the appeal in question.

W. KARANJA

JUDGE

Delivered signed and dated at Embu this 28th day of **July, 2008**.

In presence of:-