

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Appeal 473 of 2004

KENYA ALLIANCE INSURANCE CO. LTDPLAINTIFF

V E R S U S

JOHN MUTUKU MUSYIMIDEFENDANT

R U L I N G

The Respondent in this appeal has moved the deputy registrar of the court to place the appeal before a judge in chambers for dismissal for want of prosecution under Order 41, rule 31(2) of the Civil Procedure Rules (the Rules). Under that rule, if, within one year after service of the memorandum of appeal, the appeal shall not have been set down for hearing, the registrar shall, on notice to the parties, list the appeal before a judge in chambers for dismissal.

It is the Respondent's case that the memorandum of appeal was served on 8th July, 2004, the same having been filed on the 7th the same month. Nearly three years have passed without the appeal being set down for hearing. The Respondent therefore seeks dismissal of appeal for want of prosecution. The Appellant's response is that it is still interested in prosecuting the appeal and that it is waiting to be supplied with a certified copy of the proceedings of the lower court.

I have perused the court record. This appeal has never been admitted to hearing. Beyond prosecuting an application for stay of execution pending appeal, which was conditionally allowed on 6th October, 2001, the Appellant has never done anything towards prosecution of the appeal. No evidence has been tendered before the court to support the Appellant's claim that it has been waiting to be supplied with a copy of the lower court proceedings. There is thus no satisfactory explanation given for the delay of nearly three (3) years in prosecuting the appeal.

In the event therefore this appeal be, and is hereby, dismissed under Order 41, rule 31(2) of the Rules with costs to the Respondent. Order accordingly.

DATED AT NAIROBI THIS 2ND DAY OF JULY 2007

H. P. G. WAWERU

J U D G E

DELIVERED THIS 6TH DAY OF MAY 2007