

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

CIVIL APPEAL 98 OF 2003

KIRINYAGA GENERAL MACHINERY.....APPLICANT

Versus

HEZEKIEL MURIITHI IRERI.....RESPONDENT

RULING

The Appellant in this appeal filed the appeal on 6th August 2003. On the same day the Appellant filed an application for stay pending appeal. The ruling of that application was on 25th November 2003. Stay of execution was granted on condition that the Appellant would continue to pay rent at the old rate. The matter thereafter ‘went to sleep’.

The Respondent has approached the court by way of Chamber Summons dated 9th October 2006. By that application the Respondent seeks an order for the dismissal of the appeal for want of prosecution. The same is made on the grounds that, there had been no steps taken by the Appellant for 2 ½ years and that the Appellant is not serious with the appeal. That application brought under *Order KLI Rule 31 (1)* of the Civil Procedure Rules. That rule provides:

“Unless within three months after the giving of directions under rule 8B the appeal shall have been set down for hearing by the appellant, the respondent shall be at liberty either to set down the appeal for hearing or to apply by summons for its dismissal for want of prosecution”. (underlining mine)

It is clearly seen from that rule before the Respondent can move the court either to set the appeal down for hearing or to apply for dismissal for want of prosecution directions ought to have been given as provided in Rule 8B. Directions have never been given in this matter. Directions having not been given the orders sought by the Respondent cannot be entertained. That as it may be, the court does indeed note that there has been inordinate delay in prosecuting this appeal and accordingly as much as the orders will not be given the costs of the Chamber Summons shall be borne by the Appellant. I am also minded to give directions hereof.

The final orders of the court therefore are as follows:

- (1) That the Chamber Summons dated 9th October 2006 is hereby struck out with costs to the Respondent.
- (2) The court does hereby give directions in respect of this appeal that, the record of appeal is in order, that the appeal shall be heard for ½ day at Nyeri.

Dated and delivered at Nyeri this 29th day of June 2007.

MARY KASANGO

JUDGE

