

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

Civil Appeal 431 of 2000

PETER MACHARIA WANUGU.....APPELLANT

VERSUS

BEDAN MWANGI NJOROGE.....RESPONDENT

RULING

By way of this Notice of Motion dated 24th April 2007 and brought under Order XLI Rule 4 of the Civil Procedure Rules and Section 3A of the Civil procedure Act seeks orders that the order of 22nd January 2007 dismissing the Applicant's appeal for want of prosecution be set aside and/or vacated and the appeal be reinstated.

The application is based on the ground that the appeal was dismissed on 22nd January 2007; that the advocate on record for the Applicant was not aware; and that before the dismissal there was an application pending for hearing which was not brought to the attention of the court but the date and the nature of the alleged application is not indicated.

The dispute in this matter was decided by the Maragua District Tribunal and the Applicant preferred an appeal against that award. He appealed to the Provincial Land Tribunal which dismissed the appeal on 5th July 2000. The Applicant was given 60 days to appeal against the Decision and the Memorandum of Appeal was filed on 17th August 2000. For the last 7 years the Applicant did not take any necessary step to file the Record of Appeal and prosecute the appeal.

The Appellant was served with the Notice to show cause why the appeal should not be dismissed for want of prosecution under Order XLI Rule 31 (2) of the Civil Procedure Rules on 22nd December 2006 but when the matter came up on 22nd January 2007 the Appellant did not attend and the appeal was dismissed. And since the appeal was dismissed on 22nd January 2007, the applicant took over 3 months to file this application to set aside the dismissal order. A delay of over 7 years is inordinate and without explanation and it is inexcusable.

Litigation must come to an end and for the above reasons the

Applicant's Notice of Motion dated 24th April 2007 is dismissed with costs.

Dated and delivered at Nairobi this 19th day of July 2007.

J.L.A. OSIEMO

JUDGE