

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Appeal 396 of 2005

A.O. BAYUSUF & SONS LIMITEDAPPELLANT/RESPONDENT

VERSUS

IBRAHIM ADAN ALI RESPONDENT/APPLICANT

RULING

The Applicant who is the Respondent in the appeal in this suit, has filed Chamber Summons dated 18th December, 2006 seeking to have the Appellant's appeal herein dismissed for want of prosecution, the memorandum of appeal having been filed on 14th June, 2005 and thereafter the Appellant having taken no step further to-date the third year being almost halfway.

The Appellant on the other hand blames the court Registry on the ground that several letters have been written without replies being received from the court Registry which is also not releasing the proceedings. At the same time Mrs. Michiki counsel for the Appellant points out that the application has been brought under wrong provisions of the law Order XLI Rule 3(2) of the Civil Procedure Rules which does not exist and wants the application be dismissed as it is brought before directions taken.

Mr. Owenga for the Applicant says he is relying on section 3A of the Civil Procedure Act even if Rule 3(2) of order XLI does not exist and directions have not been taken.

From my careful consideration of the matter Mr. Omwenga saying that the proceedings have been typed and that it is the Appellant's counsel who is failing in collecting the proceedings from the Registry, and having seen the letters the appellant's counsel has written to the court which letters he says are not being replied, I do sympathise with both sides. The Applicant must feel concerned in the circumstances and in as much as the Appellant's counsel may be relying too much on correspondence without going for the proceedings in person, I feel the court Registry must have a share of the blame for failing to reply letters. I do not understand why that should be happening yet letters form an important channel through which day to-day business is conducted in every organization. Courts cannot afford to ignore letters as doing so definitely undermines court's efficiency in the performance of court work.

With the above in my mind, although I feel that the delay of 2 ½ years without step being taken is too long and the fact that directions have not been taken would not have deterred me from granting this application, I feel I should give the Appellant the benefit of the doubt to allow him a little more time to see what he will do to take further steps in the appeal.

Accordingly, I do hereby dismiss Chamber Summons dated 18th December, 2006 but order the Appellant to pay costs of the Chamber Summons to the Applicant and grant the Applicant, liberty to apply after a period of three (3) months from the date of this ruling.

Dated and delivered at Nairobi this 5th day of December, 2007

J.M. KHAMONI

JUDGE