

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA
Civil Appeal 75 of 2000

CATHOLIC DIOCESE OF BUNGOMA

SISTER LYDIA ACHIENG MAKOKHA
APPELLANT

VS

BRAMWEL OUMA AGWATA RESPONDENT

RULING

By a notice of dismissal of appeal, under Order XLI rule 31(2) of the civil Procedure Rules, the Deputy Registrar notified Kimaru Kiplagat & Co. Advocates and M/S Ashioya & Co. Advocates that the appeal would be placed before the Judge on 9th February, 2006 for dismissal unless sufficient cause is shown why such an order should not be made.

Both firms of Advocates were represented at the hearing- Mr Keter on behalf of the Appellant and Mr. Ashioya for the Respondent.

For the appellant, it was argued that the notice by the Registrar was premature because the proceedings had not been availed despite several requests. It is significant to note that the appellant did not file any affidavit as evidence in opposition. The advocate for the Appellant was merely talking from the bar.

For the Respondent, it was argued that, memorandum of appeal was filed on 15th September 2000. Together with the appeal, was a certificate of urgency and stay application. The matter was last in Court on 22nd November 2000 for the hearing of the application for stay, since then the Applicant went to sleep. That there is nothing on record to show that the Applicant has taken any action to process the appeal for hearing.

I have gone through the entire file and found a fact that there is no indication that the appellant has taken any step to process the appeal since its inception. In addition thereto, there is no evidence by way of affidavit filed by the appellant to show, if any, the steps taken to have the appeal heard.

The appeal was filed on 15th September 2000. It is over 4 years now. The ends of justice demands that this appeal be dismissed under order XLI Rule 31(2) of the Civil Procedure Rules, which I hereby do. Costs to the Respondent in any event.

Dated and delivered this 13th day of February 2006.

N.R.O. OMBIJA

JUDGE