



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI  
Civil Appeal 60 of 2002

WILSON WOKABI MAGONDU ..... APPELLANT  
VERSUS  
JOSEPHINE GATHERU NJANJA ..... RESPONDENT

*(Appeal from the Provincial Land Disputes Appeals Committee Central Province sitting in Kiyanaga Appeal No. 181 of 2000 in respect of Rice Holding No. 2409 Mwea Irrigation Settlement Scheme – Wilson Wokabi Magondu v/s Josphine Gatheru Njanja read and adopted as the Judgment of the Honourable Court by Mr. S. M. Juma – District Magistrate sitting in Wang’uru D.M.L.D.T. case No. 11 of 2000 on 19th February 2001)*

R U L I N G

By a notice of motion dated 23rd February 2005, Josephine Gatheru Njanja who is the Respondent in the appeal seeks to have the appeal filed against her dismissed for want of prosecution. The application is brought under Order XVI rule 5 C & D and order L rule 1 of the Civil Procedure Rules and section 3A of the Civil Procedure Act. It is the Respondent’s contention that the appellant has failed to take action to prosecute the appeal since 6th October 2004 when he was given time to prepare a better record of appeal.

Mr. Kahiga who appeared for the Appellant urged this court to dismiss the application as it is defective having been brought under wrong provisions of the law and further that the supporting affidavit is defective.

I do concur with Mr. Kahiga that Order XVI rule 5 of Civil Procedure Rules deals with dismissal of original suits and has no application in the dismissal of appeals which is governed by Order XLI rule 31 of the civil Procedure Rules. There being a specific legal provision dealing with dismissal of appeals for want of prosecution there is no justification for invoking the inherent powers of the court under section 3A of the Civil Procedure Act. To that extent therefore the application is defective.

Nonetheless it is evident that notwithstanding the directions given by the court on 6th October 2004, the appellant has not taken action to regularize the record of appeal. The appellant is therefore warned that unless appropriate action is taken the court will move *suo motto* and dismiss his appeal for want of prosecution.

I reject the application dated 23rd February 2005 and dismiss it. I make no orders as to costs.

**Dated signed and delivered this 13th day of July 2005.**

**H. M. OKWENGU**  
**JUDGE**