

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Civil Appeal 94 of 1999

MASTERMIND TOBACCO (K) LTD.....APPELLANT
VERSUS
VILITA MWAKANI.....1ST RESPONDENT
MICHAEL MULEI KASYOKI.....2ND RESPONDENT

RULING

On 14/10/99 the appellant filed an appeal from the judgment of the learned magistrate in CMCC No. 2998 of 1997 which was delivered on 26/11/1998. The appeal was admitted to hearing on 11/11/99 but since then no step was ever taken to fix the same for hearing. On 24/1/2004 the respondent filed an application by way of a notice of motion seeking dismissal of the said appeal for want of prosecution. The application was first listed for hearing on 24/11/2004 but the same was taken out of the hearing list for that day due to pressure of work. The application was thereafter listed for hearing on a number of occasions but for some reasons the same could not be heard.

When the application came up for hearing, Mr. Mongeri who held brief for the respondent's advocate, conceded that there were neither grounds of opposition nor replying affidavit filed by the respondent. The hearing of the application therefore proceeded ex parte.

I entirely agree with Mr. Musembi, the applicant's learned counsel, that the appellant's conduct is calculated to frustrate the respondent in that for nearly six years the appellant has not shown any interest in prosecuting its appeal. That kind of indolence is tantamount to abuse of the court process and the court must express its displeasure thereto by dismissing the appeal for want of prosecution as I hereby do. The appellant will pay the costs of the appeal and of the application to the respondent.

DATED, SIGNED AND DELIVERED at Nakuru this 13th day of October, 2005.

D. MUSINGA
JUDGE
13/10/2005