

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL APPEAL NO 63 OF 1995

DANSON NJIRU JACOB
ALBERT MUNYI J. KABARATHI APPELLANTS
VERSUS
JOSEPH NTHIGA KAGAU)
GATURI FARMERS CO-OP SOCIETY LTD) RESPONDENTS
ALIAS NEMBURE FARMERS CO-OP SOCIETY LTD)

RULING

This is an application for the review and setting aside of the order dismissing this appeal for want of prosecution, and for the reinstatement of the appeal.

The memorandum of appeal in this case was filed on March 9, 1995. The Appellants took absolutely no steps after that to prosecute this appeal, and so on March 7, 2002, the same was dismissed for want of prosecution under Order 41 Rule 31 (2) and 1 A of the Civil Procedure Rules.

This application was filed on February 16, 2004 – almost nine years after the memorandum of appeal was first filed. This is a long period of time. And the Appellants’ explanation for this inordinate delay? That they were in the process of obtaining letters of administration of the estate of Jacob Kabarathi ...” The Appellants do not explain the relevance of those letters to this appeal, nor why it took so long to obtain. There simply isn’t enough information before this court to exercise the discretion in favour of the Applicants. They are guilty of inordinate delay, which is not sufficiently explained. It is an important principle of justice that litigation must come to an end. The Respondents cannot be expected to wait eternally for their fate to be decided in a case in which the Appellants have gone to slumber.

Accordingly, I am unable to allow this application and the same is dismissed with cost to the Respondents.

Dated and delivered at Nairobi this 17th day of May, 2004.

ALNASHIR VISRAM
JUDGE