



Toroitich & another v Chemuta & another (Environment and Land Appeal E002 of 2022) [2022] KEELC 13449 (KLR) (3 October 2022) (Ruling)

Neutral citation: [2022] KEELC 13449 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ITEN
ENVIRONMENT AND LAND APPEAL E002 OF 2022
L WAITHAKA, J
OCTOBER 3, 2022**

BETWEEN

JONAH K. TOROITICH 1ST APPELLANT

PETER GICHARU KAMAU 2ND APPELLANT

AND

PAUL BIWOT CHEMUTA 1ST RESPONDENT

DISTRICT LAND REGISTRAR, ELGEYO/MARAKWET COUNTY 2ND RESPONDENT

RULING

1. The appellant filed his memorandum of appeal on 23rd March, 2022. On the same date, the Deputy Registrar Iten, requested the Senior Principal Magistrate to forward the original file together with certified copies of proceedings. The file and certified proceedings are yet to be forwarded for appeal purposes.
2. When the appeal came for mention on 3rd October 2021, Counsel for the appellant did not attend court. Counsel for the 1st respondent, Mr. Collins Kigen informed the court that he has never been served with a notice of appeal or memorandum of appeal and urged the court to dismiss the Appeal for want of prosecution.
3. Ms Cheruiyot Counsel for the 2nd respondent supported the application for dismissal.
4. The question before this court is whether this court can dismiss the appeal at this stage.
5. The applicable Law on the process of appeals is regulated by the Civil Procedure Act (CPA) and the Civil Procedure Rules (CPR) 2010. Order 42 Rule 35 of the CPR provides for dismissal of an appeal for want of prosecution as herein under;



- i. Unless within three months, after granting of directions under Rule 13, the appeal shall have been set down for hearing by the appellant, the respondent shall be at liberty either to set down the appeal for hearing or to apply by summons for its dismissal for want of prosecution.
 - ii. If within one year after the service of the memorandum of appeal, the appeal shall not have been set down for hearing, the Registrar shall on notice to the parties list the appeal before the Judge in chambers for dismissal.
6. In this matter, the memorandum of appeal was lodged on 22nd March, 2022. The original file and certified proceedings have not been forwarded by the trial court. One year has not lapsed since the memorandum of appeal was filed. Although there is no correspondence from the appellant following up with the Deputy Registrar about the entire court record, it is abundantly clear that the trial court has not forwarded the original record and proceedings as directed in the letter dated 23rd March, 2022.
7. Accordingly, I find this appeal is not ripe for dismissal and I make the following orders;
 - i. The Executive Officer Iten Law Courts to comply with the letter of 23rd March 2022 and forward the original records/file together with enough certified copies of proceedings to enable the appellant file his record of appeal within 14 days.

DATED, SIGNED AND DELIVERED AT ITEN THIS 3RD DAY OF OCTOBER, 2022.

L. N. WAITHAKA

JUDGE

Ruling read virtually in the presence of:

N/A for the appellants.

Mr. Collins Kigen for the 1st respondent/Paul Biwot Chemuta present in Open Court

Ms. Cheruiyot for the 2nd respondent

Christine Towett: Court Assistant

