

REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT

MERU ELC APPEAL NO. 34 OF 2017

(Formerly Meru H.C.C.A NO. 69 of 2017)

DANIEL KIUNGA M'KIAMBATI.....APPELLANT

VERSUS

ISAYA M'KIRERA M'KIAMBATI.....RESPONDENT

JUDGMENT

(AN APPEAL FROM THE JUDGMENT OF HON. H.N NDUNG'U

CM MERU DELIVERED ON 6.7.2017 IN MERU CMCC NO. 37 OF 2014)

1. On 25.4.2018, the court gave directions for appellant to file and serve their submissions within 14 days and respondent was to file their submissions thereafter within 14 days. Appellant did not comply with this direction but respondent went ahead and filed his submissions on 31.6.2018. On 25.7.2018, counsel for the appellant urged the court to grant an extension of 7 days to file submissions.
2. However, as the court was proceeding on recess on 1.8.2018, the court indulged the appellant's side to file their submissions by 31.7.2018. I however did not see any such submissions by the time I was packing this file on 1.8.2018 to proceed to write the judgment. I therefore conclude that appellant has not undertaken to prosecute this appeal.
3. It has also been pointed out by the respondent that this appeal is time barred. I have looked at the records and indeed judgment was delivered on 6.7.2017 whereas the memorandum of appeal was filed on 18.8.2017. There is no evidence to show that appellant had sought for extension of filing this appeal out of time. I therefore find that the appeal was filed contrary to the provisions of section 79 (c) of the civil procedure act. I also find that the cases cited by the respondent on this point *Asy vs. DJBM (2017) eKLR* and *Meru HCC No. 306 of 2013 Samuel Kilemi & another vs. Festus Gituma Kuthuka* are relevant to this case.
4. In light of the foregoing, I need not delve into the merits of this appeal.
5. The appeal is hereby struck out with costs to the respondent.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 3RD OCTOBER, 2018 IN THE PRESENCE OF:-

C/A: Galgalo/Faith

C.P Mbaabu present

Respondent

HON. LUCY. N. MBUGUA

ELC JUDGE