



**Muthuri v Karuma & another (Civil Appeal E064 of 2022)
[2024] KEHC 3239 (KLR) (4 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3239 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E064 OF 2022
EM MURIITHI, J
APRIL 4, 2024**

BETWEEN

JULIUS MURIUKI MUTHURI APPELLANT

AND

SELINA KARAMA KARUMA 1ST RESPONDENT

JAMES MURIUNGI IMATHIU 2ND RESPONDENT

RULING

1. By a Notice of Motion dated 11/12/2023 pursuant to Order 42 Rule 35 (1) of the Civil Procedure Rules, Sections 1A, 1B and 3A of the *Civil Procedure Act* and all enabling provisions of the law, the Respondents seek, “That this appeal be dismissed for want of prosecution as per the law.”
2. The application is premised on the grounds on the face of it and supporting affidavit of the 1st Respondent sworn on even date. She avers that following the entry of judgment in their favour on 13/5/2022, the Appellant filed a memorandum of appeal on 30/5/2022 challenging the said decision. Directions were taken on 6/2/2023 that the matter be mentioned before the Deputy Registrar on 18/5/2023. On that date, the Deputy Registrar directed that the record of appeal be filed within 45 days, and service of those directions was duly effected upon the Appellant. The Appellant appointed the firm of Otieno C & Company Advocates who filed a notice of appointment on 2/8/2023. When the matter was mentioned before the judge on 3/8/2023, the Appellant was granted a further 30 days to file the record of appeal.
3. The matter was subsequently mentioned on 4/10/2023 and 22/11/2023, where it was noted that the Appellant was yet to comply with the court directions. The applicant avers that she is advised by her counsel on record that if directions are given on appeal and the same is not set down for hearing within 3 months, one can apply for the dismissal of the appeal for want of prosecution. It has been 4 months since the directions were given and the Appellant is yet to file the record of appeal to enable it to be set



down for hearing. It is apparent that the Appellant is not interested in this appeal and the same should be dismissed for want of prosecution, as the delay in prosecuting it is intentional, unreasonable and constitutes inexcusable laches. The Respondents are heavily prejudiced by the delay and laxity of the Appellant in prosecuting the appeal.

4. The application is unopposed, as it has not been responded to.

Determination

5. The court considers the sole issue for determination to be whether the Appellant's Appeal ought to be dismissed for want of prosecution.

6. Order 42 Rule 35 provides for dismissal for want of prosecution as follows:

“(1) Unless within three months after the giving 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. (2) 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 a judge in chambers for dismissal.”

7. On 6/2/2023, the court (Cherere J.) ordered that,

- “ 1. Record of Appeal not filed.
2. Record of Appeal be filed within 14 days failure to which the appeal will stand dismissed.”

8. The Appellant has not proffered any explanation why he blatantly failed to comply with court's directions to file the Record of Appeal, within the set timelines or at all, despite having been accorded numerous opportunities to do so, to justify the exercise of this court's discretion is his favour.

9. This court is satisfied that the Appellant has wholly lost interest in pursuing his appeal, as the inordinate delay in filing the Record of Appeal as hitherto directed by the court has not been explained.

Orders

10. Accordingly, for the reasons set out above, the court finds merit in the Respondents' application dated 11/12/2023 and it is allowed in the following terms:

1. The Appellant's appeal stands dismissed for want of prosecution in failure to comply with the directions of the court of 6/2/2023.
2. The Respondents shall have costs of the application and the appeal.

Order accordingly.

DATED AND DELIVERED THIS 4TH DAY OF APRIL, 2024.

EDWARD M. MURIITHI

JUDGE

Appearances:

M/S Otieno C. Advocates for the Appellant.



M/S Mithega & Kariuki Advocates for the Respondent (Applicant).

