



**Sukari Industries Ltd v Gworo (Civil Appeal 38 of 2019)
[2024] KEHC 4587 (KLR) (15 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4587 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CIVIL APPEAL 38 OF 2019
KW KIARIE, J
APRIL 15, 2024**

BETWEEN

SUKARI INDUSTRIES LTD APPELLANT

AND

EDWARD ARCHIPUS GWORO RESPONDENT

RULING

1. The respondent/applicant moved the court through a Notice of Motion dated the 14th day of March 2024. It was brought under section 3A of the [Civil Procedure Act](#) and Order 17 (2) of the [Civil Procedure Rules](#). He is seeking the following orders:
 - a. That the civil appeal herein is dismissed with costs for want of prosecution.
 - b. That the respondent herein be awarded the costs of this application.
2. The application was premised on the following grounds:
 - a. The appellant, dissatisfied with the judgement and decree of the Senior Resident Magistrate Ndhiwa Law Courts delivered on 21st March 2019, appealed against the same vide Memorandum of Appeal dated 2nd April 2019 and filed it in court on 14th April 2019.
 - b. After filing its Memorandum of Appeal on 14th April 2019, the appellant has not taken any steps to have the same determination for over four years now.
 - c. The appellant has never been fixed for mention for directions or hearing; hence, it has never proceeded. Does this manifest a lack of interest in prosecuting the matter?
 - d. The respondent filed an application on 9/5/2023 to have the same dismissed, but the appellant's advocate, on 26/10/2023, assured the court that they would file their record of



appeal within 14 days from the date thereof. However, they have failed to comply with orders of the court dated 26/10/2023 in toto until this date and as of the time of filing this application.

- e. Further, the court directed the appellant on 23/01/2024 to give evidence of their efforts at the Ndhiwa Law court registry. Still, they have failed to provide evidence via letters to the Deputy Registrar, hence the lack of desire to prosecute this matter for over four years.
 - f. It is a general principle that litigation must end.
 - g. In the interest of justice, the application herein be allowed with costs to the respondent.
3. The appellant/respondent was served with the application but did not file any response.
 4. On the 26th day of October 2023, both parties were represented in court. Mr. Onyango informed the court that they had applied for the proceedings in 2019, but the same had yet to be supplied. He requested fourteen days to file the record of appeal.
 5. When this ruling was written, no record of appeal had been filed, and no appearance was made on the appellant's behalf despite the current dismissal application.
 6. There is no indication why the appellant's advocate failed to file a response or attend court. The application dated the 14th day of March 2024 is allowed. The appeal is dismissed with costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 15TH DAY OF APRIL 2024.

KIARIE WAWERU KIARIE

JUDGE.

