



REPUBLIC OF KENYA



Uzuri Foods Ltd v Bata Healthcare International Ltd (Civil Appeal E794 of 2023) [2024] KEHC 7489 (KLR) (20 June 2024) (Ruling)

Neutral citation: [2024] KEHC 7489 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E794 OF 2023**

RC RUTTO, J

JUNE 20, 2024

BETWEEN

UZURI FOODS LTD APPELLANT

AND

BATA HEALTHCARE INTERNATIONAL LTD RESPONDENT

RULING

1. This matter was scheduled for hearing during RRI. During the hearing, Mr. Mahugu, counsel, was present for the respondent. He informed the court that the Firm of Macharia Waiganjo & Nyakoe were on record for the appellant but were not present in court. Counsel further informed court that the appellant served him with today's date hence he expected that he will be present.
2. I have perused this court file and note that on the 6th May 2024, the court directed the appellant to file submissions on appeal. Subsequently, on 30th May 2024, this matter was listed for mention, and there was no appearance for the appellant. Today, 20th June 2024, again, the appellant has no appearance. I also note that despite the Record of Appeal and the respondent submissions being filed, the appellant has not filed any submissions. I have also checked the Court Tracking System and confirmed that the appellant is yet to file his submissions as directed.
3. Further, there are no reasons on record as to why the appellant failed to comply with the orders of the court. I therefore draw guidance from the case of *Stephen Muthamia Marete & 2 others v Mary Naitore Kinyua (enjoined as the legal representative of the Estate of Patrick Kinyua Iringo)* [2018] eKLR where the court held

Active prosecution of this appeal would have necessitated submissions by the appellant. Though the respondent's submissions are on the record they are of not much help in debating the main points raised in the memorandum of appeal as they just seek to confirm that the magistrate's court's decision was right.



In my view, when an appellant has been ordered to file written submissions and he fails to do so as the appellants have done in this case, the court should find, as it does in this case, that the appellant has failed to prosecute his appeal, or is no longer interested in pursuing it.

4. Consequently, I too find that the appellant has failed to prosecute its appeal by failing to comply with the courts directions and failing to file its submissions in the circumstances, I dismiss the appeal with costs for want of prosecution.

RHODA RUTTO

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF JUNE, 2024

For Appellants: No Appearance

For Respondent: Mr. Mahungu

Court Assistant: Peter Wabwire

The parties are to be supplied with a copy of this ruling upon payment of the required Court fees.

