



REPUBLIC OF KENYA



**Karanja v Karanja (Civil Appeal E213 of 2013) [2024] KEHC 8567 (KLR) (15 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8567 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL APPEAL E213 OF 2013  
DO CHEPKWONY, J  
JULY 15, 2024**

**BETWEEN**

**CHARLES MWAURA KARANJA ..... APPELLANT**

**AND**

**LUCIA WANJIRU KARANJA ..... RESPONDENT**

**RULING**

1. On 24<sup>th</sup> June, 2024, this matter came up for mention for parties to confirm compliance of directions issued on 18<sup>th</sup> May, 2024, which directions were as follows:-
  - a. The Appellant be and is hereby granted a further twenty-one (21) days leave to file and serve the Record of Appeal.
  - b. The Deputy Registrar to call for and avail the original record of proceedings in Githunguri SPMCC. No.06 of 2021, Lucy Wanjiru Karanja –vs- Charles Mwaura.
2. These directions were issued following the directions issued by the court on 26<sup>th</sup> September, 2023 that:-
  - a. The Appellant to file and serve Record of Appeal within forty-five (45) days.
  - b. Lower court file to be availed.
  - c. Appeal to be canvassed by way of written submissions.
3. These directions of 26<sup>th</sup> September, 2023 were issued after counsel for the Appellant confirmed that they had complied with the conditions upon which the stay of execution was granted, that is, deposited the entire decretal amount in court within twenty-one (21) days from the 11<sup>th</sup> July, 2023. It will be noted that sine 26<sup>th</sup> September, 2023, the Appellant has been granted time within which to file and serve a Record of Appeal. In fact, on 26<sup>th</sup> September, 2023, the counsel for the Appellant was present



when the directions were issued. On 16<sup>th</sup> May, 2024, the timelines within which to file the Record of Appeal by the Appellant was extended when the court noted that the said directions and mention notice may not have been served upon the Applicant's counsel.

4. Listening to counsel for the Respondent on 24<sup>th</sup> June, 2024, it clearly came out that the Respondent's counsel had been served (and reminded of) the directions reissued on 16<sup>th</sup> May, 2024. Neither the Appellant nor their counsel attended court or even sent representation to explain their failure to file a Record of Appeal and absence in court, despite having been served with the mention Notice on 21<sup>st</sup> June, 2024.
5. In view of this, this Court finds that the continued delay in having the Record of Appeal availed is hindering the Respondent's from enjoying the fruits of her Judgment due to the indolence on the part of the Appellant.
6. Order 42 Rule 35 of the Civil Procedure Rules provides for dismissal of appeals for want of prosecution. Rule 35(1) provides that:-

“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.

7. It is worth-noting that the directions on the disposal of the appeal were issued on 26<sup>th</sup> September, 2023. It has been almost nine (9) months since those directions were issued. Ideally, this is beyond the three months period provided for by the law and therefore this appeal is ripe for dismissal so as to avoid an upsurge in backlog in our courts. This Court therefore proceeds to order that:-
  - a. This appeal filed vide a Memorandum of Appeal dated 3<sup>rd</sup> July, 2023 be and is hereby dismissed for want of prosecution pursuant to Order 42 Rule 23(1) of the Civil Procedure Rules.
  - b. The Stay of Execution orders issued on 11<sup>th</sup> July, 2023 is hereby discharged for non-compliance by the Appellant.
  - c. Subsequently, the sum of Kshs. 650,000.00 deposited in court as security for due performance as a condition to grant stay of execution, to be released to the Respondent, through her counsel.
  - d. Costs of the appeal to be paid to the Appellant.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED AT KIAMBU VIA**

**ELECTRONIC MAIL THIS ...15<sup>TH</sup> ...DAY OF ....JULY...., 2024.**

**D. O. CHEPKWONY**

**JUDGE**

