



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KILGORIS

ENVIRONMENT & LAND COURT APPEAL NUMBER 23 OF 2021

(FORMERLY NAROK ELCA NUMBER 32 OF 2019.)

LEBOI OLE NAIRENKE.....1ST APPELLANT/RESPONDENT

MOSES NAIRENKE.....2ND APPELLANT/RESPONDENT

-VERSUS-

SAMWEL SHESHOROI.....RESPONDENT/APPLICANT

RULING

The Respondent/Applicant filed an Application seeking to dismiss the Appellant's/Respondent's Memorandum of Appeal dated 4th December 2019 and filed in court on the 5th December 2019 for want of prosecution.

The Respondent/Applicant is also seeking costs of the Application as well as the Appeal to be borne by the Appellants/Respondents.

The Application is premised on the following grounds; -

1. The Appellants/Respondents herein being aggrieved by the Judgment and Decree of the Trial Court in the proceedings known as KILGORIS PMC ELC NO. 35 OF 2018 filed a Memorandum of Appeal dated 5th December 2019 on the 9th of December 2019.
2. However, the Appellants/Respondents have never filed the Record of Appeal as is required by law within the stipulated time frame.
3. It is now over One (1) Year since the Memorandum of Appeal dated 5th December 2019 was filed and served and therefore the Appellants/Respondents can be deemed to have lost interest in the said Appeal.
4. Consequently therefore, the Appellant/Respondent has failed to take the essential steps towards the expeditious disposal of the instant Appeal and the same should be dismissed.

The Application is supported by the Affidavit of Samuel Sheshoroi who is the Respondent/Applicant sworn on the 8th March 2021.

The Application came up in Court on the 30th of September 2021 and the Court directed that the same be served on the Appellants/Respondents Counsel together with a Hearing Notice and the same to proceed on the 14th October 2021.

According to the Affidavit of Service dated 8th September 2021 and filed in court on the 14th of October 2021, the Court was satisfied that proper service of the Hearing Notice for 14th October 2021 as well as the Application had been done.

However, there was no representation by the Counsel for the Appellants/Respondents namely Messrs Leina Morintat & Company, Advocates on the 14th of October 2021.

Counsel for the Respondent/Applicant therefore proceeded to prosecute the Application dated 6th March 2021 giving raise to this Ruling.

ANALYSIS OF THE FACTS & THE LAW.

The settled facts of this Application are that the 1st and 2nd Appellants/Respondents herein filed a Memorandum of Appeal dated 5th December 2019 in this Court on the 9th December 2019.

Since then, the Appellants/Respondents have not filed any Record of Appeal to enable directions on hearing of the substantive Appeal to be taken.

Similarly, there is no communication and/or any indication of any challenge in which the Appellants/Respondents are facing that have resulted to the inordinate delay in filling the Record of Appeal.

Consequently therefore, the Memorandum of Appeal dated 5th December 2019 and filed in Court on the 9th December 2019 has just been left unattended for the last Twenty-Two (22) Months without any justification.

The Issue before this Honourable Court is whether or not the Respondent/Applicant has established sufficient grounds for the Dismissal of the Appeal for want of prosecution as pleaded in the Application dated 6th March 2021.

Section 79 G of the Civil Procedure Act, Cap 21 provides as follows:-

“ Every Appeal from a sub-ordinate Court to the High Court shall be filed within a period of thirty (30) days from the date of the Decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the reparation and delivery to the appellant of a copy of the decree or order.”

In essence therefore, an Appellant is required to file both the Memorandum of Appeal as well as the Record of Appeal within the prescribed timelines provided hereinafter.

The exception is where the Appellant has been unable to obtain either the certified Decree or certified typed proceedings from the Court registry within the stipulated time lines.

The use of the word SHALL connotes the mandatory and strict nature of this provision of the law.

A perusal of the file before the Honourable Court, it is clear that the Appellants/Respondents filed a Memorandum of Appeal dated 4th December 2019 in Court on the 5th December 2019.

Since then, there is no record or proceedings in the file which demonstrate an effort by the Appellants/Respondents to either prepare the substantive Record of Appeal or prosecute the same.

Similarly, the Appellants/Respondents have not written or communicated any difficulties they may be facing in obtaining any Court document which would inhibit the Appellants/Respondents from filing the substantive Record of Appeal and prosecuting the same.

Counsel for the Respondent/Applicant upon filing this Application has duly served the Counsel for the Appellants/Respondents with both the present Application and hearing Notice but there was no attendance by the said Counsel.

Consequently, the Application before Court dated 6th March 2021 is unopposed by the Appellants/Respondents.

This Honourable Court is therefore satisfied that there is no valid or good explanation as to why the Appellants/Respondents have not complied with the provisions of Section 79 G of the Civil Procedure Act, Cap 21.

Subsequently, the Appellants/Respondents inaction can be deemed to be arising out of lack of interest in prosecuting the Appeal.

The period of more than Twenty (20) months of which the Appellants/Respondents have been inactive is rather inordinate and without any valid and/or justifiable reason.

The Respondent/Applicant has a right to claim a termination of the Appeal by the Appellants/Respondents because litigation must always come to an end.

In conclusion therefore, I find the Application dated 6th March 2021 by the Respondent/Applicant to be merited and grant the same as prayed.

SIGNED, DATED AND DELIVERED IN KILGORIS ELC COURT ON THE 25TH DAY OF OCTOBER, 2021

EMMANUEL.M.WASHE

JUDGE

In the Presence of:-

1. Court Assistant – Matiko

2.

3.