



REPUBLIC OF KENYA



KENYA LAW
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**Thairu v Wainaina & 2 others (Civil Appeal E202 of 2021)
[2024] KEHC 14523 (KLR) (6 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14523 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E202 OF 2021
DO CHEPKWONY, J
NOVEMBER 6, 2024**

BETWEEN

PETER KIBUI THAIRU PLAINTIFF

AND

SAMMY WAINAINA 1ST DEFENDANT

HILARY KEMEI 2ND DEFENDANT

JOSEPH OGOLA EZRA 3RD DEFENDANT

RULING

1. This is a ruling in respect of a Notice of Motion application dated 11th May, 2023, where the Applicant, who is the Respondent in this appeal has sought for orders that:
 - a. This appeal be dismissed for want of prosecution.
 - b. The costs of the application be awarded to the Applicant.
2. The application is based on the ground set out on its face and in the Supporting Affidavit sworn by Wilfred Orenge Stephen on even date.
3. According to the Applicant, through her advocate, Mr. Wilfred Orenge Stephen, it has been more than one year since the appeal was filed in court on 18th day of January, 2022 and the Appellant/Respondent has taken any step to follow up and prosecute the appeal or to take any directions to proceed with the hearing of the appeal. This, the Applicant (Respondent) finds is an unfair practise only meant to prevent her from enjoying the fruits of the Judgment, hence has been prejudiced by this delay.
4. I have perused the court record and noted that despite being served with the application and notices to attend court, there has been no response by the Applicant since 15th March, 2022 when parties were granted a stay of execution pending the determination of the appeal.



5. In view of this, the court finds that it is quite evident that the Appellant lost interest in having the appeal prosecuted and it will only be prudent to unclog the court system of backlog and allow the Respondent enjoy the fruits of its Judgment delivered on 26th October, 2022 in Ruiru CMCC No.E228 of 2021, by Honourable Priscah Nyokabi.
6. Consequently, this appeal be and is hereby dismissed for want of prosecution as provided for under Order 42 Rule 35(2) of the Civil Procedure Rules with costs to the Respondent.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 6TH DAY OF NOVEMBER, 2024.

D. O. CHEPKWONY

JUDGE

In the presence of:-

No appearance for and by the Appellant

Mr. Orange counsel for Responden/Applicant

Court Assistant - Martin

