



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 11 OF 2005

JOHN NDUNGURU

HANNAH WANJIKU

ELIZABETH WANJIKU (Suing on behalf of the

African Independent Pentecostal Church of Africa).....APPELLANTS

-VERSUS-

SAMUEL GAKUYA

VIRGINIA MUTHONI

SAMUEL KAIRUKI

HANNAH NJERI NYORO

CATHERINE WANGARI

EUNICE NYAMBURA NGARE.....RESPONDENTS

AND

ARCHDEACON WILSON MUCHAI

BISHOP DANIEL KIONGO (As trustees of the African

Independent Pentecostal Church of Africa).....INTERESTED PARTIES

RULING

1. A notice to show cause was issued in this matter on 11th January, 2019 against the appellants to show cause why the appeal should not be dismissed for want of prosecution since 6th December, 2010. In response thereto, a replying affidavit was sworn by *John Ndunguru*, one of the appellants herein. He asserted that following the institution of the appeal, the parties undertook negotiations and that in the process, the court file went missing. The deponent added that since then, all the respondents have passed away save for the 2nd respondent, Virginia Muthoni, who is elderly and unwell. That in view of the circumstances, the appellants are desirous of either prosecuting the appeal or having the same settled through negotiations with the legal representatives of the deceased respondents.

2. Having taken note of the above, I now turn to the court record and more specifically, the proceedings of 8th December, 2010 wherein the court noted that the matter was adjourned generally while the appellants were granted leave to file a supplementary record of appeal within 60 days from the date thereof. It is apparent that this was the last position in the matter prior to the issuance of the notice to show cause.

3. While I have considered the argument by the appellants that negotiations were ongoing as of that period, there is no evidence of the same in the court file. Similarly, the appellants have not availed any documentation to verify their averments that the court file went missing.

4. Furthermore, this is a 2005 appeal which has been inactive since 2010 and without good reason. One would expect the appellants to proactively pursue their appeal and yet this was not done. The appellants did earlier on bring to the attention of the appellate court the argument that all of the respondents save for one have since passed away. In any case, there is no way to authenticate this turn of events since no relevant documents have been made available to this court. The delay in prosecuting the appeal has not been sufficiently explained.

5. In respect to the above, I shall draw reference from the holding in *Ivita v Kyumbu [1984] KLR 44* in finding that there has certainly been a prolonged delay in prosecuting the matter and which delay has not been sufficiently explained. More importantly, this is an old appeal which ought to have been determined at the earliest opportunity.

6. In view of the foregoing, I am not satisfied that the appellants have shown sufficient cause why their appeal should remain in place. The appeal is consequently dismissed with costs to the respondents.

Dated, signed and delivered at NAIROBI this 14th day of February, 2019

L. NJUGUNA

JUDGE

In the presence of:

.....for the Appellants

..... for the Respondents