

REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUNGOMA.

CIVIL APPEAL NO. 27 OF 2012

GODFREY WAFULA.....APPELLANT

VERSUS.

EZEKIEL BARASA WALUCHIO.....DEFENDANT

RULING.

The Respondent Ezekiel Barasa Walucho [Plaintiff in the Magistrates Court – Bungoma Civil Case No. 243/2010] filed the suit against the Appellant Godfrey Wafula claiming general damages arising from a road traffic accident where his son Anthony Barasa Wapangala died. The Appellant filed defence denying liability on 27.3.2012. Parties filed a Consent on liability to be apportioned at 20:80 in favour of the Plaintiff.

By Judgment dated 22.5.2012 Nyarima – CM awarded the Respondent Kshs.427,840 to the Respondent after due deduction on contribution at 20%. Dissatisfied with the award the appellant filed this Civil Appeal No. 21/2012 on 31.5.2012. The appeal was admitted for hearing on 14.2.2014.

Mr. Mwebi for the Applicant prayed to this court to dismiss the appeal as no action has been taken since the same was admitted to Appeal. M/S Lilani Advocate filed a Replying Affidavit stating that they ceased acting for the appellant and attached an application. He confirms he lost touch with the appellant and does not know his whereabouts. I have perused the documents annexed by Lilani & Co. Advocates. There is no order allowing them to cease acting attached to their response. It therefore means that they are the Advocates properly on record. No explanation for the delay in prosecuting this suit has been made; other than they have been unable to trace the appellant.

Delaying prosecuting this appeal has an effect on the execution of the Judgment. I therefore find a delay of 7 years since filing and 5 years since admission inordinate which shows lack of interest in this appeal. This Appeal is hereby dismissed for want of Prosecution.

Dated and Delivered at Bungoma this 16th day of May, 2019.

S.N. RIECHI

JUDGE