

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

CIVIL APPEAL NO.29 OF 2017

GEORGE OMOLO ODONGO.....APPELLANT/RESPONDENT

VERSUS

OSCAR OTIENO ODONGO t/a ODONGO

INVESTMENT AUCTIONEERS.....RESPONDENT/APPLICANT

(An appeal from the judgment of Hon. S. Ongeru, PM delivered on 31st May 2017 in Mbita PM's Court Misc. Civil Application No.1 of 2015)

RULING

1. Application dated 20th May 2019, seeks orders that the appeal lodged by the respondent in June 2017, be dismissed for want of prosecution with necessary costs to the applicant.

The grounds in support of the application are in the body of the appropriate chamber summons and supported by the averments in a supporting affidavit dated 20th May 2019 deposed by the applicant.

The response to the application is based on the averments contained in the respondent/appellant's replying affidavit dated 25th June 2019.

This court has given due consideration to the supporting grounds and the opposition by the appellant as well as the oral submissions by the parties and is of the considered view that the appellant/respondent has completely failed to demonstrate why this court's discretion should be exercised in his favour as he has failed to give proper, valid and satisfactory grounds for his failure to prosecute the appeal since it was filed herein on 8th November 2017, almost two years ago.

The indulgence which was granted to the appellant earlier by this court was sufficient enough and the fact that he failed to take further action to have this appeal prosecuted is a clear demonstration that he is not serious in having the appeal prosecuted and that his response in objection to the present application is an abuse of the court process.

In sum, the application is allowed with costs to the applicant/respondent.

J.R. KARANJAH

JUDGE

15.07.2019

[Read and signed this 15th day of July, 2019]