



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

CIVIL APPEAL NO. 11 OF 2015

KAMAKEI KALEKE.....1ST APPELLANT/RESPONDENT

KASHU KALEKE.....2ND APPELLANT/RESPONDENT

SIDEI KALEKE.....3RD APPELLANT/RESPONDENT

VERSUS

TUPANA OLOLOISIONG'A.....RESPONDENT/DEFENDANT

(Being an appeal from the judgement and decree delivered on 28th July 2015

by Hon. T.A. SITATI (MRS), SRM, in the Chief Magistrate's Court in Civil

Case No. 75 of 2013, Tupana Ololoisiang'a v Kamakei Kaleke, Kashu Kaleke & Sidei Kaleke)

RULING

1. The respondent/applicant has filed this motion pursuant to the provisions of Order 42 Rules 35 (2) and Order 50 Rule 50 Rule 1 of the 2010 Civil Procedure Rules; in which he has sought dismissal of this appeal for want of prosecution and costs of this application.
2. The application is supported by eleven grounds that are set out on the face of the notice of motion and an 11 paragraphs supporting affidavit of the applicant.
3. The major grounds in support of the application are as follows. The appellants filed an incomplete record of appeal on 27th August 2015 against the magisterial judgement that was delivered on 28th July 2015. For the past four years now, the appellants have not taken any steps to compile a complete record of appeal, which has delayed the appeal. As a result of the filing of the appeal, the lower court file was brought to the High Court registry and placed in the High Court appeal file. It is now over four years and the appellants have not yet taken any steps towards setting down the appeal for directions. Furthermore, although there are no stay orders, it has been difficult to execute as the file is still with the High Court file.
4. Furthermore, the appellants' conduct is wanting and is unjust for the applicant to be restrained from the fruits of the lower court judgement. The delay in prosecuting the appeal is unreasonable and the applicant stands to endure prolonged suffering and 2019 marks six years of suffering and frustration.
5. The affidavit is a replica of the grounds that are set out on the face of the notice of motion and is unnecessary to reproduce them.
6. Counsel for the appellant/respondents was served with notice of mention dated 24th June 2019; see affidavit of service filed in court on 21st June 2019. The proceedings therefore were conducted in the absence of the appellant/respondents.

The application is therefore unopposed.

7. I find that this appeal has been pending without the appellant/respondents taking any steps to complete the compilation of the record of appeal for now over four years. I find the delay to be unreasonable. It is to be borne in mind that justice delayed is justice denied.

8. The upshot of the foregoing is that the application succeeds. I therefore allow it with no order as to costs.

Ruling signed, dated and delivered in open court at Narok this 3rd day of October, 2019 in the absence of the appellants and in the

presence of the respondents.

J. M. Bwonwonga

Judge

3/10/2019