



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL APPEAL NO. 193 OF 2003**

**SMITHKLINE BEECHAM INTERNATIONAL LTD.....APPELLANT**

**-VERSUS-**

**FRANCIS MWANIKI NYAGA.....1<sup>ST</sup> RESPONDENT**

**INTER-CONSUMER PRODUCTS LTD.....2<sup>ND</sup> RESPONDENT**

*(Being an appeal from a Ruling and Order of the Senior Resident Magistrate's Court at Nairobi (Milimani Commercial Courts) Civil Suit No. 3843 of 2001 by Hon. Maina (Ms.)*

**RULING**

The ruling herein arises from a Notice to show cause which was issued by the court pursuant to Order 45 Rule 35(2) of the Civil Procedure Rules requiring the parties to show cause as to why the appeal should not be dismissed for want of prosecution.

The Appellant filed a replying affidavit on the 3<sup>rd</sup> day of October, 2019 sworn by Njeri Kariuki Advocate, on the 30<sup>th</sup> day of September 2019. In the said affidavit, she depones that she has been following up the matter on behalf of the Appellant and that her client is still interested in prosecuting the appeal.

The court has taken into consideration the averments made in the said affidavit. I have also perused the record and the documents annexed to the replying affidavit.

The record shows that the appeal was filed way back in the year 2003. The Appellant filed the Record of Appeal on the 17<sup>th</sup> July, 2015 but thereafter, he took no action in the appeal until the court on its own motion served the parties with notices to show cause why the appeal should not be dismissed for want of prosecution. The reason offered by the Appellant for the delay in prosecuting the appeal is that it took inordinately long time for the proceedings to be availed by the trial court and that even after filing the Record of Appeal, its Advocate was unable to set the appeal down for hearing as the lower court file could not be traced despite several requests to the Executive Officer for assistance in tracing the file. He has annexed several letters to that effect.

The court has perused the said letters and has noted that none of them has been stamped with the registry stamp. It is therefore difficult for this court to establish whether indeed they were delivered to the court registry or not. However, I note that the Appellant has filed a Record of Appeal and the Appeal will be ready after directions are given.

On the prejudice that the Respondents are likely to suffer in the event that the appeal is not dismissed, the record shows that both Respondents did not file affidavits in response to the notice to show cause. In the interest of justice, the court will not dismiss the appeal but due to the fact that the same was filed more than fifteen (15) years ago, I do hereby order that the same be prosecuted within 60 days from the date of this ruling failing which, it shall stand dismissed.

**Dated, signed and delivered at NAIROBI this 17<sup>TH</sup> day of OCTOBER, 2019.**

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**L. NJUGUNA**

**JUDGE**

In the presence of:

.....for the Appellant

.....for the 1<sup>st</sup> Respondent

.....for the 2<sup>nd</sup> Respondent