

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 492 OF 2006

WANJIRU NDUGO.....APPELLANT

-VERSUS-

MWANGI NGURE.....RESPONDENT

RULING

1. This ruling relates to the notice to show cause issued on 27th June, 2019 requiring the parties to show cause as to why the appeal should not be dismissed for want of prosecution. The notice to show cause indicates that the appeal was last in court on 11th May, 2016.
2. In responding to the notice to show cause, *Dominic Njuguna Mbigi* swore the replying affidavit on 2nd October, 2019 on behalf of the appellant, asserting that the appellant disappeared soon after giving instructions to file the appeal, hence the reason why the appeal was never set down for hearing. The deponent stated that the appellant has since resurfaced and is still keen on prosecuting her appeal.
3. I have considered the explanation given by the advocate for the appellant in his affidavit referenced hereinabove. I have also perused the record and established that the memorandum of appeal was filed way back in July, 2006. Subsequently, the appellant filed her record of appeal on 28th March, 2007.
4. The record also shows that a notice to show cause had previously been issued against the parties and when the same came up for hearing on 16th June, 2015 neither the appellant nor the respondent were in attendance, resulting in the dismissal of the appeal on the said date.
5. Going by the record, the appellant through her advocates thereafter filed an application on 25th January, 2016 seeking the reinstatement of her appeal. Being guided by the record, I am able to determine that when the parties appeared before the court on 20th March, 2017, the counsel for the respondent indicated that his client passed away sometime in 2016; consequently, the matter was scheduled for mention on 11th May, 2017. However, there is no indication as to what transpired on the day the matter was scheduled for mention. From the foregoing, I have gathered that this is quite an old appeal which was in actual fact dismissed on 16th June, 2015 and there is nothing to indicate that the application dated 25th January, 2015 seeking to reinstate the appeal was ever heard and/or the dismissal order set aside.
6. In the premises, I find that as it stands, there is no appeal presently before this court.

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

.....

L. NJUGUNA

JUDGE

In the presence of:

.....for the Appellant

.....for the Respondent