

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CIVIL APPEAL NO.4 OF 2018

(Appeal arising from the Judgment and decree of Kericho

CM CC No.4 of 2015 by Hon. S. Mokuu – CM)

NAZISH MOTORS LTD.....1ST APPELLANT

JACKSON OGINDA.....2ND APPELLANT

VERSUS

MERCY MORAA WAFULA.....APPLICANT/RESPONDENT

RULING

1. Before me is a Chamber Summons dated 24th July 2019 for dismissal of suit (appeal) for want of prosecution.
2. This appeal was filed on 21st February 2018 through counsel M/s Kairu & McCourt Advocates.
3. Since then no progress in the appeal was recorded, and therefore on 21st September 2019 the respondent Mercy Moraa Wafula filed the present Chamber Summons dated 24th July 2019 through counsel M/S E. M. Juma & Ombui for dismissal of the suit (appeal), for want of prosecution, which application was brought under Order 42 Rules 11 and 13 (1) and (2) and Order 35 Rule 1 and 2 of the Civil Procedure Rules 2010, as well as section 3A of the Civil Procedure Act (Cap.21).
4. The application has grounds on the face of the Chamber Summons and is supported by an affidavit sworn on 24th July 2019 by Evans Juma Matunda Advocate for the applicant (respondent), with the main ground of the application being that more than 3 months had lapsed since the appellants filed their Memorandum of Appeal, and thereafter the appellants had so far not yet caused it to be listed for directions before a Judge in Chambers.
5. The application is not opposed, though an affidavit of service was filed. On the hearing date Mr. Mbeche for the applicant urged the court to allow the application.
6. I have considered the application, and perused the file. From the record, it is true that no step has been taken by the appellant or counsel since the filing of the appeal. The application is also not opposed. In my view therefore, the application not being opposed has merits, and there is no reason to disallow the same.
7. I thus allow the application and dismiss the appeal for want of prosecution. The applicant is hereby awarded costs of both the application and the appeal.

Dated at Kericho this 18th November, 2019.

George Dulu

JUDGE