



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

**(CORAM: CHERERE-J)**

**CIVIL APPEAL NO. 54 OF 2017**

**BETWEEN**

**RADIO AFRICA GROUP LIMITED t/a THE STAR.....1<sup>ST</sup> APPELLANT**

**JUSTUS OCHIENG.....2<sup>ND</sup> APPELLANT**

**AND**

**JAMES MWANGI MWANIKI.....APPLICANT**

**RULING**

1. By a notice of motion dated 11<sup>th</sup> September, 2019 brought under Sections 1A, 1B, 3A and 79B of the Civil Procedure Act, Order 17 rule 2(4) and Order of the Civil Procedure Rules, the Applicant prays for orders THAT: -

- 1) **The Honourable court be pleased to dismiss this appeal for want of prosecution**
- 2) **The costs of this application be provided for**

2. The application is based on the grounds among others that this appeal was previously dismissed on 15<sup>th</sup> May, 2018 for want of prosecution and was reinstated on 18<sup>th</sup> October, 2018 following a successful application by the Appellants. The application though served was not opposed.

4. I have considered the notice of motion in the light of the supporting affidavit and proceedings in the file. The memorandum of appeal was filed on 14<sup>th</sup> July, 2017 and to date, 2 years and 5 months down the line, the Appellants have not filed the record of appeal.

5. This appeal was last in court 18<sup>th</sup> October, 2018. For a period of one year and two months, the Appellants have not taken any steps to prosecute the appeal. I am persuaded that its continued pendency no doubt infringes on the Applicant's legitimate expectation that disputes against him should be resolved expeditiously.

7. Consequent to the hearing of this application, the Appellants on 06<sup>th</sup> December, 2019 filed a notice of withdrawal of the appeal.

8. In the result, the appeal is withdrawn. The Appellants shall bear the costs of the appeal and of the application dated 11<sup>th</sup> September, 2019.

**DATED AND DELIVERED IN KISUMU THIS 10<sup>th</sup> DAY OF December 2019**

**T.W. CHERERE**

**JUDGE**

**Delivered in open court in the presence of-**

**Court Assistant -**

**For the Appellants -**

**For the Applicant -**