

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CIVIL CASE NO 73 OF 2013

Philip Mururi Ndarua.....Appellant

versus

Gatemu Housing Society Ltd.....Respondent

RULING

On 23 September 2015 I delivered a ruling allowing this Appeal to be reinstated after it had been dismissed for want of prosecution. The parties took a date for the hearing of the appeal on 7th December 2015 and on the said date the matter was listed before me for hearing. On the said date the appellant confirmed that he had filed written submissions while counsel for the Respondent asked for a mention date to confirm that he had filed his submissions. Pursuant thereto, the matter was listed for mention on 16th February 2016 and on the said date the Respondents counsel had not filed submissions. Judgement date was fixed for 10th March 2016.

Unfortunately, when I retired to write the judgement I noted that this appeal has pre-maturely been listed for hearing and certain crucial steps have never been taken. I find this to be unfortunate considering that this appeal was filed on 23rd September 2013 and the appellant only woke up after the appeal was dismissed for want of prosecution by the court as stated above.

Order **42** rule **11** Civil Procedure Rules provides that:-

*“Upon filing of the Appeal the Appellant shall within thirty days, cause the matter to be listed before a Judge for directions under section **79B** of the Act”.*

To date Order **42** Rule **11** Civil Procedure Rules has not been complied with. The directions under Section **79B** of the Act would entail the admission or summary rejection of the Appeal. Directions under Order **42** rule **13(1)** Civil Procedure Rules cannot be given before admission under section **79B** Civil Procedure Act.

In brief this Appeal has never been admitted notwithstanding that it was filed on 23rd September 2013. It follows that it would be improper for me to render a determination of the appeal under the above circumstances. Such a judgment, would, in my view be premature and open to legal challenge.

Accordingly, I direct the appellant to take such steps as may be necessary to regularize the position.

Orders accordingly

Dated at **Nyeri** this 10th day of March 2016

John M. Mativo

Judge