



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT EMBU**

**CIVIL APPEAL NO. 130 OF 2012**

**LYDIA WANJIRA**

**RACHEAL IRIMA NYAGA**

**CICILY WANGARI**

**EUNICE WANGARI .....APPELLANTS**

**VERSUS**

**PETER MUCHIRA NJAU.....RESPONDENT/APPLICANT**

**RULING**

1. This is an application for dismissal of this appeal for want of prosecution. The application is brought by way of notice of motion and is supported by the grounds on the face of that motion. Furthermore, it is anchored in the supporting affidavit of the respondent/applicant. In his grounds in support of the application, the applicant has stated that the appeal has been pending without being prosecuted and that the appellants have lost interest in their appeal. He also stated that ever since the filing of the appeal, the appellants have not taken any step to finalize it.

2. In his supporting affidavit the applicant has deponed that the appeal was filed on 21<sup>st</sup> December 2012 by the firm of M/S Mungai and Kivuti & Co. Advocates, and the appellants have not taken any steps to prosecute it. He has also deponed that he has visited the High Court Registry to ascertain whether the appellants have taken any steps to prosecute their appeal and found that the appellants had not taken any steps to prosecute their appeal. Furthermore he, has deponed that it is now over three years, since the appeal was filed and the appellants have not taken any steps to prosecute their appeal. He has further deponed that the filing of this appeal was intended to deny him the fruits of his judgment. Finally, he has deponed that it is for the foregoing reasons that he now seeks to have the appeal dismissed for want of prosecution.

3. The application proceeded in the absence of the appellants, after I was satisfied that they were properly served and had adequate notice of the hearing.

4. I find this appeal was admitted into hearing on 24<sup>th</sup> September 2013 and on 30<sup>th</sup> September 2013 the advocates on record were notified by the Deputy Registrar that their appeal had been admitted into hearing. Since that time the appellants have not taken any steps to prosecute their appeal. First, they have not prepared the record of appeal. It therefore follows that the appeal has been lying unprosecuted for now over three years and eight months. I therefore find that the appellants have lost interest in their appeal.

5. In the circumstance, I hereby grant the application. The appeal is hereby dismissed for want of prosecution with no order as to costs.

**RULING DATED, SIGNED and DELIVERED** in open court at **EMBU** this **13<sup>th</sup>** day of **SEPTEMBER 2016**

In the presence of the respondent/applicant and in the absence of all the respondents.

Court clerk Njue.

**J.M. BWONWONGA**

**JUDGE**

**13.09.16**