



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT MURANG'A

ELCA 15 of 2018

LUCIAH WANJIKU MURIMA.....APPELLANT/RESPONDENT

VERSUS

AMICA SAVINGS & CREDIT LIMITED.....1ST RESPONDENT /APPLICANT

RESTORERS CONSULT

AUCTIONEERS 2ND RESPONDENT /APPLICANT

RULING

1. What is before me is an application filed under a Notice of Motion and brought under Order 42 Rule 35(1) of the Civil Procedure Rules.
2. The application is supported by the grounds that the period of one year has lapsed since the Appellant filed her Appeal and no steps have been taken to file and serve the Record of Appeal nor to fix the Appeal for directions/hearing. That the delay is inordinate.
3. The application is further supported by the Supporting Affidavit of Jonathan Ngumo Mbogo who deponed and reiterated the grounds in support of the application. That the Applicant has been prejudiced in terms of increased costs and the delay in determining the suit in the lower Court occasioned by the pendency of this Appeal.
4. This application is similar in all respects to the application made by the Applicant on the 8/9/2019 and determined by the Court on the 16/1/2020. In that ruling the Court held that since no directions had been taken under Order 42 Rule 13, then under Order 42 Rule 35 the Applicant's application would be premature. The Court directed the Deputy Registrar to issue Notice to show cause under Order 42 Rule 35(2) of the Civil Procedure Rules.
5. My perusal of the record shows that the Deputy Registrar of the Court indeed issued a notice to show cause on the 22/1/2020. There is no evidence that the said notice was served upon the Appellant. It is also true that before the said notice to show cause was prosecuted the Applicant on the 8/9/2020 filed another application similar to the one determined on the 16/1/2020 despite the directions that the Court had issued.
6. For the above reason therefore, this Court is of the view that the application is an abuse of the process of the Court. In the case of **Githunguri v Republic [1985] KLR 91** the Court of Appeal adopted the decision of Lord *Selbourne* in **Metropolitan Bank Ltd v Pooley (1885) 10 App Cases, 210, p.214** stated that;

"The power seemed to be inherent in the jurisdiction of every Court of Justice to protect itself from the abuse of its own procedure".
7. I need not belabour the point but to state that this application is dismissed to allow the process initiated by the Deputy Registrar under Order 42 Rule 35(2) to be completed.
8. The proper orders for the disposal of the application is to order the Hon Deputy Registrar of the Court to expediently issue notice to the parties and list the Appeal before the judge for dismissal within the next 14 days from the date hereof.
9. I make no orders as to costs.
10. **It is so ordered.**

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 30TH DAY OF SEPTEMBER 2020.

J G KEMEI

JUDGE

Delivered in open Court in the presence of;

Appellant/Respondent: Absent

Njiraini HB for Mbogo for the Defendants/Applicants

Njeri & Kuyiki, Court Assistants