

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CIVIL APPEAL NO. 95 OF 2011

PATRICK J. MURIUKI APPELLANT/RESPONDENT

VERSUS

LOISE WAMBUI MUNYUA..... RESPONDENT/APPLICANT

R U L I N G

This is the notice of motion dated 4th April 2014 filed under Order 2 Rule 15(d) Civil Procedure Rules for the Court to strike out the Memorandum of Appeal dated 2nd August 2011 and filed on 3rd August 2011.

The main ground is that the appeal has been overtaken by events and is serving no purpose as the Respondent was released from Civil Jail after the money had been paid. The application is supported by the affidavit of Peterson Kinyua Kiama advocate for the Respondent/Applicant.

The appeal herein was against the Orders by the Magistrate's Court which sent him to civil jail. His attempt to stay the said orders by the trial court was dismissed (PKKII). He was eventually released from Prison once the decretal sum was paid. Since then he has not taken any steps to prosecute this appeal. There is evidence that this application was served on the Appellant/Respondent's advocate on 10th April 2014. To date there is no response filed in respect of the said application. They were equally served with the hearing notice for 22nd July 2014 but neither the Appellant/Respondent nor his Counsel appeared in Court.

This appeal was filed on 3rd August 2011. It is therefore governed by Order 42 Civil Procedure Rules and does not fall under pleadings as is insinuated by Counsel who filed this application under Order 2 Rule 15(d) Civil Procedure Rules.

Order 42 Rule 11 Civil Procedure Rules provides;

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

The Appellant has not taken any steps to have directions taken under section 79B of the Civil Procedure Act. It is now exactly three (3) years since the appeal was filed. The Appellant/Respondent has not denied that the decretal sum was paid to the Respondent/Applicant as a result of which he was released from Civil Jail. And that being the case the Appellant/Respondent should have withdrawn the appeal. He has not had the appeal listed for directions or withdrawn it. The pendency of the appeal amounts to an abuse of the Court process. It's in the interest of justice that the matter is not allowed to remain pending anymore. I invoke section 3A Civil Procedure Act and strike out the appeal with costs.

DATED SIGNED, AND DELIVERED IN OPEN COURT AT EMBU THIS 9TH DAY OF SEPTEMBER 2014.

H.I. ONG'UDI

J U D G E

In the presence of:-

Mr. Kiama for Respondent/Applicant

Mutero/Kirong – C/c