



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO.63 OF 2012**

**PETER OKWAKOMURWA.....APPELLANT/RESPONDENT**

**-VERSUS-**

**SYLVANUS EMMANUEL WALUTSACHI.....APPLICANT**

***(Being an appeal from the ruling of the SRM (P. ACHIENG) in Kakamega***

***Civil Case No. 387 of 2005 delivered on 6<sup>th</sup> July 2012)***

**RULING**

1. The applicant herein by way of Notice of Motion dated 14th July 2014 brought pursuant to **sections 1A, B, 3 and 3A** of the Civil Procedure Act seeks the dismissal of the appellants appeal together with costs.
2. His application is based on the grounds that the appellant filed his appeal 17<sup>th</sup> July 2012 with the intention of seeking more time on how to liquidate the decretal sum but has not prepared the record of appeal to date. Further that the appellant herein has slept on his constitutional right of appeal while denying the applicant from enjoying the fruits of successful litigation.
3. The application is supported by the affidavit of the applicant sworn on the same date wherein he depones that the Appellant/Respondent filed the Notice of Appeal on the 17 July 2012 and was to prepare the Record of Appeal and set the appeal for hearing but has not done so.
4. The applicant further states that the Appellant/Respondent filed an application for stay of execution pending hearing of the appeal on 9th July 2012 yet he had acknowledged having paid all decretal amounts. The applicant avers that since appellant/respondent has acknowledged payment of the decretal sum the appeal pending in the High Court ought to be dismissed to mark the matter settled.
5. The application is opposed. There is a statement of grounds of opposition dated 3rd November 2014 filed by the Appellant/Respondent. He states therein that the application herein was made before this appeal was admitted for hearing and that directions have not been taken.
6. The application herein was canvassed orally.
7. This court has considered the arguments by both the applicant who is acting in person and Mr. Nandwa for the Appellant/Respondent. From the application it is clear that the applicant is seeking liberty

to apply for the dismissal of the appellants appeal herein. This court construes it that the applicant seeks the dismissal of the appellants appeal.

8. The records herein show that on the 21st July 2014 this appeal herein was admitted and the appellant ordered by this court to prepare a proper record of appeal and thereafter the matter was to be listed for directions. It is on record that by the time the application herein was filed on the 14th July 2014 the appeal had not been admitted and directions had also not been taken therefore the appellant could not have acted on the appeal prior to 21<sup>st</sup> July 2014.

9. This court finds that the application herein is premature and is therefore dismissed with no order as to costs. The appellant is ordered to urgently fix the appeal for directions as the appeal has taken two (2) years since it was lodged. If the appeal is not fixed for directions within thirty (30) days from today, the appeal shall stand dismissed with costs to the applicant/respondent.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 13<sup>TH</sup> DAY OF NOVEMBER 2014**

**RUTH N. SITATI**

**J U D G E**

In the presence of

Present in person Applicant/Respondent

Mr. Onsando for Nandwa for Respondent/Applicant

Mr. Fred Juma Court Assistant