



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Civil Appeal 182 of 2002**

**SOLOMON OGOT..... APPLICANT/RESPONDENT**

**VERSUS**

**WILFRED WASONGA OWINO..... 1<sup>ST</sup> RESPONDENT**

**STEPHEN JUMA. .... 2<sup>ND</sup> RESPONDENT**

**R U L I N G**

The application before the court is a Notice of Motion dated 30<sup>th</sup> May, 2012 filed by the Respondent /Decree Holder. It seeks the dismissal of the appeal for want of prosecution.

The record shows that the appeal was filed by a Memorandum of Appeal filed on 24<sup>th</sup> April, 2012 and dated 23<sup>rd</sup> April, 2012. When this application was prosecuted on 17<sup>th</sup> September, 2012, Mr. Amuga for Respondent/Appellant conceded that no relevant action to move the appeal to disposal had been taken by Appellant. No record of appeal has ever been filed and served. Nor have the relevant directions ever been fixed to be taken. On the other hand, no execution of the decree could be made since the Appellant had sought and obtained a stay of execution.

Looked upon to explain the reason for delay, the Appellant though Mr. Amuga could only sadly that they had not managed to obtain the lower court records to enable them take other necessary steps. Mr. Amuga did not and probably could not support his ground for delay. He had not annexed any documents to show attempt to obtain the lower tribunals record for the purpose of the appeal.

I have carefully considered this application. The same is not seriously nor justifiably opposed. The Appellant admits delay. He fails to give valid reasons for delay. He fails to show that he ever attempted to obtain the lower tribunals record in any way.

In the above circumstances, the court is reasonably persuaded that the Appellant without reasonable cause failed to prosecute this appeal over a long period and in particular, for the last two years. The application to dismiss it is accordingly meritorious and is hereby granted as prayed, with costs to the Applicant. To that end, the appeal is hereby dismissed also with costs here and below. Orders accordingly.

Dated and delivered at Nairobi this 5<sup>th</sup> day of November, 2012.

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**D A ONYANCHA**

**JUDGE**