



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 60 OF 2008

M'EBAI GATULUKUMEAPPELLANT

VERSUS

JOSEPH MAINGI M'IMATHIURESPONDENT

RULING

1. On 5.2.2019, Mr. Mutunga holding brief for Kiome for respondent applied for the dismissal of this appeal averring that on 27.2.2014, the court allowed the appellant to be substituted (appellant had died), but that this order was not complied with and that on 3.5.2012 appellants were granted 30 days to file appeal failure to which the appeal would be dismissed and that to date appellant has not filed an appeal.
2. The counsel for appellant avers that negotiations have been going on and that parties are about to settle the matter.
3. The chronology of events in this file depicts the depth of abuse of court's processes.
4. A judgment was delivered before Meru CMCC No. 495 of 2004 on 25.6.2008 and a month later, a memorandum of appeal was filed. Few months later on 14.11.2008, the then appellant obtained a stay of execution of the lower court judgment pending the appeal herein vide the application filed under a certificate of urgency on 9.7.2008.
5. Thereafter, there was no more urgency in the case. The Record of Appeal was not filed and the appeal has never been heard.
6. Attempts to have the appeal dismissed hit a snag when in a ruling dated 3.5.2012, the court gave appellant 30 days to prepare the Record Of Appeal, in default of which the respondent was at liberty to apply for dismissal of the appeal. The appellant died on 5.5.2013 and by then the courts orders of 3.5.2012 had not been complied with.
7. A legal representative was appointed to take over as appellant. He was known as David Mwenda Maingi. He also did not make any efforts to have the appeal prosecuted.
8. Thus respondent filed an application on 5.12.2014 for dismissal of the suit. As fate would dictate, before this application could be prosecuted, the appellant known as David Mwenda too died. The court was informed of his death on 22.10.2015.
9. Since then, the matter stalled, including the application for dismissal. As at 30.4.2018, the court was being told that appellant's counsel was yet to file the application for substitution.
10. I find that this suit abated about three years ago (around 2015) and there is no plausible reason as to why the matter is active. Who is this person who is giving instructions on negotiations etcetera yet he has not taken out the grant in respect of the estate of David Mwenda?. What legal mandate does this person have to perpetuate litigation herein?. It is not lost to this court that the appellants side obtained an order of stay of execution more than ten years ago and that this order has never been vacated, yet Judgments have a statutory lifespan.
11. I proceed to give final orders as follows:

- 1. Pursuant to provisions of order 24 rule 3 and rule 9 of the Civil procedure rules this suit is marked as abated.**
- 2. The orders of stay of execution granted on 14.11.2008 are hereby discharged.**
- 3. The lower court file is to be severed from this file and to be remitted back to the lower court.**
- 4. This appeal file is marked as CLOSED and is to be taken to the archives.**

5. A copy of this ruling is to be place in the lower court file.

6. Respondent is awarded costs of this suit.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 13TH FEBRUARY, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Nyakwara holding brief for present

Miss Nyaga for appellant

HON. LUCY. N. MBUGUA

ELC JUDGE