



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 142 OF 2011

KANAMPIU M'RITHARA 1ST APPELLANT

GRACE MUNJIRU KANAMPIU2ND APPELLANT

VERSUS

JULIUS GITUMA KIRIGIAH 1ST RESPONDENT

NANIS KAGWIRIA GITUMA 2ND RESPONDENT

RULING

1. I find that this appeal was filed way back in December 2011.
2. On 7.12.2017 the DR was informed by Atieno holding brief for Ndubi for respondent that appellant had died 3 years ago. She also informed the court that appellant had never filed a record of appeal. She was praying for case to be marked as abated.
3. Mr. Kaume had responded as follows: **“If appeal is marked as abated, there should be no orders as to costs”**.
4. Mr. Kaume was mute on issue of record of appeal. It is against this back ground that the DR referred the matter to this court to be mentioned on 21.2.2018.
5. On 21.2.2018, Mr. Ndubi urged the court to dismiss the appeal as no record of appeal has ever been filed. He also urged the court to find that this is a very old matter where no action has ever been taken for the last 4 years and that the appeal arises out of an interlocutory ruling.
6. Mrs. Kaume stated that the matter was slated for mention and nothing else and hence there should be no application to have the matter dismissed.
7. I find that the matter was slated for mention because of the issues that were raised before the DR. No plausible or any explanation at all has been advanced as to why the record of appeal has never been filed for the last 6 plus years.
8. This is a case whereby the appellants had applied to this court for a stay of the order of the trial court vide the application filed on 20.12.2011 which was disallowed on 26.7.2013. Thereafter, nothing happened until the DR called for the file on 14.11.2017.
9. Sadly, nothing is happening in the lower court as the lower court file is here.

10. A perusal of the entire record indicates that the appellant has never attempted to comply with provisions of order 42 rule 11.

11. I am in agreement with the averments of the respondent that this appeal is but a back log. It is indeed cases of this nature that taint the image of the Judiciary and further public confidence is reduced.

12. It is not fathomable that the case CMCC no. 167/11 stalled for the last 6 years simply because the appellants lodged this appeal in respect of an interlocutory application which appeal, the appellants have failed to prosecute.

13. I hereby proceed to summarily dismiss this appeal with costs to the respondent.

14. Further the lower court file is to be remitted back immediately to the Meru CM's court for determination.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 7th MARCH, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Muthoni holding brief for Ndubi for respondents

Mrs. Kaume for Appellant present

HON. LUCY. N. MBUGUA

ELC JUDGE