



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT EMBU**

**E.L.C.A CASE NO. 32 OF 2014**

**CHARITY WANGAI NJIRU.....APPELLANT**

**VERSUS**

**JOHN NYAGA NJIRU.....1<sup>ST</sup> RESPONDENT**

**FRANCIS MUGENDI NJIRU.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. By a notice of motion dated and filed on 25<sup>th</sup> May 2018 brought under **section 3A of the CPA (Cap 21) and Order 42 Rules 11 and 13 of the Civil Procedure Rules**, the Respondents sought the following reliefs;

*a. That this appeal be struck out for want of prosecution and/or being an abuse of the court process.*

*b. That costs of the application be provided for.*

2. The said application was based upon the several grounds shown on the face of the motion. In a nutshell, the Respondents wanted the appeal to be struck out for want of prosecution. It was contended that the Appellant had lost interest in the appeal and that she had failed to set down the appeal for directions as required under the Rules.

3. The said application was supported by an affidavit sworn by the 1<sup>st</sup> Respondent on 25<sup>th</sup> May 2018. The said affidavit reiterated the grounds on which the application was based and urged the court to strike out the appeal in order to bring this litigation to an end.

4. The Appellant who is acting in person did not file any response to the said application despite service. The Respondents were, therefore, allowed to prosecute the said application *ex-parte* on 14<sup>th</sup> June 2018 upon filing an affidavit of service.

5. The court has considered the Respondents said application and the proceedings on record. The record indicates that upon delivery of the judgement by the Hon J.P. Nandi (Ag SRM) on 23<sup>rd</sup> December 2014 in Runyenjes PMCC No 61 of 2013, the Appellant's advocate requested for copies of the proceedings and judgement vide a letter dated 19<sup>th</sup> January 2015. The record further shows that the typed proceedings were certified on 23<sup>rd</sup> February 2015. The Appellant's advocates later on paid Kshs 600/- on 17<sup>th</sup> April 2015 for the proceedings.

6. The record further shows that a memorandum of appeal was filed on or about 16<sup>th</sup> January 2015 against the judgement of the Magistrate's Court and the appeal was admitted on 9<sup>th</sup> March 2015. The Appellant's advocates were duly notified of the fact of admission by the Deputy Registrar vide a letter dated 11<sup>th</sup> March 2015.

7. The appeal was listed for directions before the Deputy Registrar on 30<sup>th</sup> May 2016 when the Appellant was directed to file and serve the record of appeal. There is no indication on record of the Appellant having filed a record of appeal or having taken any steps towards prosecution of the appeal.

8. Since the Appellant did not respond to the application for dismissal of the appeal, the court accepts the Respondents' contention that the Appellant has lost interest in the prosecution of her appeal. Although the Respondents wanted the appeal to be *struck out* as opposed to being *dismissed*, the court is of the view that the appropriate order to make is for dismissal of the appeal for want of prosecution.

9. The upshot of the foregoing is that the court finds merit in the Respondents' notice of motion dated 25<sup>th</sup> May 2018. The Appellant's appeal is accordingly dismissed for want of prosecution under **Order 42 Rule 35 of the Civil Procedure Rules** with costs to the Respondents.

10. It is so ordered.

**RULING DATED, SIGNED and DELIVERED in open court at EMBU this 22<sup>nd</sup> day of NOVEMBER, 2018.**

In the presence of Ms Mutegi holding brief for Mr Lee Maina for the Respondents and in the absence of the Appellant.

Court clerk Muinde.

**Y.M. ANGIMA**

**JUDGE**

**22.11.18**