

REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 247 OF 2017

(FORMERLY HCA No. 78 OF 2013)

FRANCIS MURAYA THEURIAPPELLANT

VERSUS

MONICA WANGU WAMWERE.....RESPONDENT

RULING

1. By Chamber Summons dated 17th August 2016, the respondent sought dismissal of the appeal herein for want of prosecution. The application was brought under Order 42 rule 35 (1) of the Civil Procedure Rules and was supported by an affidavit sworn by the respondent. She deposed that after filing the appeal herein on 3rd June 2013, the appellant has not taken any step to prosecute the appeal.

2. The appellant opposed the application through a replying affidavit sworn by Raymond Kiprop Kipkemei, advocate. He deposed that it has not been possible to prosecute the appeal since typed proceedings have not been availed despite the appellant seeking them through letter dated 27th May 2013 and through a reminder dated 14th September 2016. He added that injustice will be occasioned to the appellant if the orders sought are granted.

3. I have considered the application and the affidavits filed. Order 42 rule 35(1) of the Civil Procedure Rules provides as follows:

Unless within three months after the giving of directions under rule 13 the appeal shall have been set down for hearing by the appellant, the respondent shall be at liberty either to set down the appeal for hearing or to apply by summons for its dismissal for want of prosecution.

4. The record herein shows that the Memorandum of Appeal was filed on 3rd June 2013 as High Court Civil Appeal No. 78 of 2013. The matter was later transferred to this court. Since its filing, the appeal has not been prosecuted. On 27th October 2016, counsels for both the appellant and the respondent appeared before my sister Mulwa J. and recorded a consent pursuant to which the appellant was granted 60 days within which to file record of appeal and serve it upon the respondent. The consent was recorded after the present application had been filed. The appellant was fully aware of the threat of dismissal of the appeal for want of prosecution that was looming large.

5. No record of appeal has so far been filed and no explanation has been offered as to why the consent has not been complied with. I further note that despite being served, counsel for the appellant did not attend the hearing of the present application.

6. In view of the foregoing, I am persuaded that the appellant is not keen on having the appeal heard and determined. The delay herein is inordinate. I therefore dismiss the appeal herein for want of prosecution. Costs of both the application and the appeal are awarded to the respondent in the appeal.

Dated, signed and delivered in open court at Nakuru this 18th day of December 2018.

D. O. OHUNGO

JUDGE

In the presence of:

Ms Alwala holding brief for Mr Kibet for the respondent/applicant

No appearance for the appellant/respondent

Court Assistants: Gichaba & Lotkomo