



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT CHUKA**

**CHUKA ELC CA CASE NO. 10 OF 2017**

**FORMERLY MERU ELC CASE NO.06 OF 2014**

**VIRGINIA MUCHANDI MUTHENGI.....PLAINTIFF**

**VERSUS**

**ELISHA K. NJAGI.....DEFENDANT**

**RULING**

1. This application is dated 22<sup>nd</sup> February, 2017 and seeks orders:

1. That this appeal be dismissed for want of prosecution
2. The respondent do pay the costs of the entire appeal and this application.

2. The application is supported by the affidavit of the respondent/applicant sworn on 15<sup>th</sup> February, 2017 and has the following grounds:

1. That I am the applicant/Respondent herein and I am competent to swear this affidavit in support of the summons herein.
2. That my advocate was served with Memorandum of Appeal herein on the 18.3.2014.
3. That after service of the memorandum of Appeal upon my advocates herein, I gave him instructions to proceed to represent me in the appeal.
4. That I have been informed by my advocate, which information I verily believe to be true, that the appeal was admitted by the honourable Judge on the 29.9.2014.
5. That it is now over 2 years since the appeal was admitted and the appellant has not taken any step to set the appeal down for hearing.
6. That my advocate wrote to the appellant's advocate on the 17.11.2014 informing him that the appeal had been admitted and that he should take steps to have the appeal prosecuted. Copy of the letter annexed and marked EN 1.
7. That my advocate informs me, that that letter was not responded to or acknowledged.
8. That the delay in prosecuting the appeal is inordinate and the appeal should be dismissed for

want of prosecution.

3. During hearing of the application, Mr. Murango Mwenda for the respondent, told the court that the application had not been opposed through either grounds of opposition or through a replying affidavit.

4. Mr. Mwenda told the court that after the appeal was admitted way back on 29.9.2014, the Appellant never took any step. He says that on 17.11.2014, he wrote to the appellant's advocate requesting him to prepare a record of appeal and to set the case down for hearing. Mr. Mwenda laments that he got no response.

5. Mr. Nyenyire, for the appellant told the court that he had lost touch with his client. He left it to court to decide on how to determine the application.

6. I find it meritorious to dismiss this suit for lack of prosecution in terms of order 17, CPR.

7. In the circumstances, this suit is dismissed.

8. Cost are awarded to the Respondent in the Appeal.

9. It is so ordered.

Delivered in open court at Chuka this 16<sup>th</sup> day of March, 2017 in the presence of:

CA: Ndegwa

Murango Mwenda for the applicant/respondent

Nyenyire for the respondent

**P.M. NJOROGE,**

**JUDGE.**