



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC APPEAL NO. 42 OF 2013

STEPHEN MUCHIRA NYAGA.....APPELLANT

VERSUS

MWAI MURONDO.....RESPONDENT

RULING

On 19th February 2014, this Court, (erroneously as I will demonstrate later in this ruling) admitted this appeal for hearing. The Deputy Registrar notified counsel for the Appellant accordingly vide a notice dated 7th July 2014. The Appellant appears not to have taken any steps towards prosecuting this appeal.

The Respondent in the appeal has now filed an application dated 6th May 2015 seeking the following orders:

- 1. That the Honourable Court be pleased to dismiss the appeal for want of prosecution.***
- 2. That the costs of the application be provided.***

The application is premised on the grounds set out therein and is also supported by the affidavit of **MWAI MURONDO** the Respondent in the appeal and the Applicant in this application. The gist of which is that since 19th February 2014 when this appeal was last in Court, the Appellant has failed, neglected or refused to prosecute it and that this delay is a denial of justice to the Respondent.

The Appellant has filed grounds of opposition to the said application describing it as an abuse of the process of the Court and adding that he is ready and willing to prosecute the appeal and there has been no delay in prosecuting the same.

The application has been canvassed by way of written submissions which have been filed both by **NGIGI GICHOYA** advocate for the Applicant and **WAMBUGU MUREITHI** advocate for the Respondent.

I have considered the application, the grounds of opposition and the submissions by counsel.

In his submissions, **MR. NGIGI** has asked this Court to strike out the grounds of opposition filed by the firm of **WAMBUGU MUREITHI** advocates for the Respondent on the grounds that **MR. KAGUITHIA GEORGE WAMBUGU** advocate last held a practicing certificate in the year 2007 as per the letter dated 12th October 2015 from the Law Society of Kenya and he is therefore not licenced to practice. That was not controverted in the submissions filed by **WAMBUGU MUREITHI** advocates. Indeed there is annexed to the affidavit of the Applicant a letter dated 12th October 2015 from the Law Society of Kenya confirming that indeed **MR. KAGUITHIA GEORGE WAMBUGU** last held a practicing certificate in the year 2007. That notwithstanding, however, it is now clear following the Supreme Court decision in

NATIONAL BANK OF KENYA LTD VS ANAJ WAREHOUSING LTD SUPREME COURT PETITION No. 36 of 2014 that a document prepared by an advocate not holding a current practicing certificate shall not be rendered invalid only on that ground unless such advocate has been struck off the roll of advocates. As there is no evidence that the said **MR. KAGUITHIA GEORGE WAMBUGU** has infact been struck off the roll of advocates, I will not strike out the grounds of opposition as sought by the Applicant in paragraphs 7, 8 and 9 of his supporting affidavit.

Having said so, however, it is clear that since this appeal was admitted to hearing on 19th February 2014 and counsel for the Appellant informed accordingly, no steps have been taken by the Appellant towards having this appeal prepared for trial. Indeed even no record of appeal has been prepared or filed. In the grounds of opposition, the Appellant simply states that he is ready and willing to prosecute this appeal and that there is no inordinate delay on his part. That cannot be a serious claim. It is now over three (3) years since I admitted the appeal on 19th February 2014. Clearly, the Appellant has lost interest in this matter.

But that is not all. As I stated at the commencement of this ruling, it has now come to light that the admission of this appeal on 19th February 2014 was infact by error because upon further perusal of the record herein, I have discovered that this appeal which was filed on 22nd February 2006 had infact been admitted to hearing on 18th June 2012 by **SERGON J.** sitting at **NYERI HIGH COURT**. It was therefore wrongly placed before me again for admission on 19th February 2014. Following the order of this Court dated 19th February 2014, the Deputy Registrar again, notified counsel for the Appellant through a letter dated 7th July 2014 to prepare the record of appeal. The Appellant was therefore allowed a second bite at the cherry. Again he took no action. To say that the Appellant went to sleep is clearly an understatement. He had no intention of prosecuting this appeal which I must now bring to a close.

The up-shot of the above is that the appeal is dismissed with costs.

B.N. OLAO

JUDGE

28TH JULY, 2017

Ruling delivered, dated and signed in open Court this 28th day of July 2017

Ms Manyasa for Mr. Ngigi for Respondent present

No appearance for Appellant

Respondent also present.

B.N. OLAO

JUDGE

28TH JULY, 2017