

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. APPEAL NO. 176 OF 2009

LABAN MUASYAAPPELLANT

VERSUS

CHRISTINE NGONYI KIENDIRESPONDENT

RULING

1. What is before me is the Respondent's Application dated 20th May, 2011 in which he is seeking for the dismissal of the Appeal lodged on 14th October, 2009 for want of prosecution.
2. The Application is based on the ground that the Appeal was lodged on 14th October, 2009 and no direction nor any attempt made to set it down for direction or hearing has been made.
3. In response, the Appellant's advocate deponed that the Appellant has fixed the matter for hearing of an Application on various occasions; that twice, from July, 2011 and September, 2011, he tried to fix the Appeal for hearing but the file could not be traced and that the Appeal should be allowed to proceed for hearing.
4. I have considered the brief submissions and the authorities that have been filed by the parties.
5. The Appellant filed a Memorandum of Appeal herein on 14th October, 2009 together with an Application for stay of execution of the decree that was issued by the Magistrate in Makueni RMCC No. 94 of 2009.
6. The record shows that the matter came up for hearing of an Application dated 19th February, 2010 on 22nd February, 2010 when the same was fixed for hearing on 2nd November, 2010.
7. There is no indication as to what happened on 2nd November, 2010. This Application was then filed on 20th May, 2011, less than one year after the matter was last in court.
8. Considering that the pending Application by the Appellant for stay of execution is still pending, and in view of the fact that the current Application was filed six (6) months from when the file was before the court, I find that the Application dated 20th May, 2011 for the dismissal of the Appeal was pre-maturely filed.
9. For those reasons, I dismiss the Application dated 20th May, 2011 with no order as to costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 29TH DAY OF SEPTEMBER, 2017.

O.A. ANGOTE

JUDGE