



REPUBLIC OF KENYA



KENYA LAW
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**Brooke Bond (K) Ltd v Gezzam (Civil Application
6 of 2020) [2022] KECA 667 (KLR) (8 July 2022) (Ruling)**

Neutral citation: [2022] KECA 667 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CIVIL APPLICATION 6 OF 2020
HM OKWENGU, AK MURGOR & F SICHALE, JJA
JULY 8, 2022**

BETWEEN

BROOKE BOND (K) LTD APPLICANT

AND

**ELISHA KIRIGHA GEZZAM AKA ELISHA KIRIGHA GEZZAM
MWAMBI RESPONDENT**

(Being an Application to deem as withdrawn the Notice of Appeal dated 9th October, 2013 in an intended appeal against judgment and decree of the Industrial Court of Kenya at Mombasa (Radido, J) delivered on 27th September, 2013 in Civil Suit No 40 of 2013 (Formerly Mombasa HCCC No. 83 of 2006))

RULING

1. By notice of motion dated November 18, 2019 the applicant Brooke Bond (K) Ltd, has moved this Court under section 3A & 3B of the [Appellate Jurisdiction Act](#), and Rule 83 of the [Court of Appeal Rules 2010](#), seeking to have a Notice of Appeal dated October 9, 2013 that was filed by Elisha Kirigha Gezzam aka Elisha Kirigha Gezzam Mwambi (appellant) deemed as withdrawn.
2. The application is anchored on the ground that since lodging the notice more than 6 years ago, the appellant has not taken any steps to institute the appeal. The application is also supported by an affidavit sworn by the applicant's advocate who reiterates that the appellant has not taken any action since filing the notice. In addition, the applicant has filed written submissions urging the Court to grant the motion citing Rule 83 of the [Court of Appeal Rules 2010](#) and [Mae Properties Limited v Joseph Kibe & another](#) [2017] eKLR. The applicant also prays for costs.
3. By a hearing notice that was duly served through email on May 5, 2021 on all the parties' advocates, the parties were informed that due to the Covid Pandemic, the hearing of the motion would proceed through written submissions and the parties were given timeline to exchange and file written



submissions with a deadline of 24 hours before the hearing date, which was scheduled for May 31, 2021. However, the appellant did not file any reply to the motion nor did he file any written submissions. In effect therefore the motion stands unopposed.

4. Rule 83 of the *Court of Appeal Rules 2010* which has been renumbered as Rule 85 of the *Court of Appeal Rules, 2022*, states:

“If a party who has lodged a notice of appeal fails to institute an appeal within the appointed time he shall be deemed to have withdrawn his notice of appeal and the court may on its own motion or on application by any party make such order. The party in default shall be liable to pay the costs arising therefrom of any persons on whom the notice of appeal was served.”

5. The applicant has not taken any action to institute the appeal since filing the Notice of Appeal 6 years ago. He was required under Rule 82 of the *Court of Appeal Rules 2010*, to institute the appeal within 60 days from the date of filing the notice of appeal. He has not explained this omission nor has he even bothered to respond to the applicant’s motion, and therefore it is evident that he has lost interest in the appeal. In the circumstances, it is appropriate that the notice of appeal filed by the appellant be deemed as withdrawn.

We therefore allow the applicant’s motion and issue orders as prayed in the motion.

DATED AND DELIVERED AT NAIROBI THIS 8TH DAY OF JULY, 2022.

HANNAH OKWENGU

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JUDGE OF APPEAL

A. K. MURGOR

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JUDGE OF APPEAL

F. SICHALE

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

