



**Githaiga v Kiambaa Tea Factory Limited (Appeal 15 of 2019)  
[2022] KEELRC 4074 (KLR) (29 September 2022) (Ruling)**

Neutral citation: [2022] KEELRC 4074 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL 15 OF 2019  
L NDOLO, J  
SEPTEMBER 29, 2022**

**BETWEEN**

**JAMES NJUGUNA GITHAIGA ..... APPELLANT**

**AND**

**KIAMBAA TEA FACTORY LIMITED ..... RESPONDENT**

**RULING**

1. By its notice of motion dated August 9, 2021, the respondent seeks dismissal of the appellant’s appeal for want of prosecution.
2. The motion is supported by an affidavit sworn by the respondent’s counsel, Christine Adhiambo Oraro and is based on the following grounds:
  - a. The appellant has inordinately delayed in prosecuting the appeal;
  - b. The appellant has never made any effort to file a record of appeal and have the appeal fixed for directions;
  - c. The appellant has no interest in prosecuting his appeal;
  - d. The appellant has not prosecuted his appeal and more than nine (9) years have lapsed since the appeal was filed;
  - e. The onus is on the appellant not only to prosecute the appeal but to do so expeditiously;
  - f. It is in the interest of justice and fairness that the order sought herein is granted.
3. In her affidavit in support of the motion, counsel for the respondent, Christine Adhiambo Oraro depones that the Appellant’s suit before the trial court was dismissed on May 10, 2016.



4. Counsel further depones that the appellant filed by an application dated October 18, 2017 seeking leave to file an appeal out of time, which application was never prosecuted.
5. This matter was transferred from Kiambu High Court to this court by an order issued on October 18, 2017 by J. Ngugi J (as he then was). The parties appeared before me on May 25, 2022 when counsel for the appellant sought seven (7) days to file a response to the respondent's application.
6. At the time of writing this ruling, no response had been filed on behalf of the Appellant. The litigation record regarding the appeal, as set out by the Respondent and confirmed by the court record is therefore unchallenged.
7. From 2017, when the appellant intimated his intention to lodge an appeal against the decision of the trial court rendered on May 10, 2016, no steps have been taken towards prosecuting the intended appeal. It is therefore evident that the appellant has lost interest in the said appeal and the only thing to do is to get it out of the court system.
8. The appellant's appeal is consequently dismissed for want of prosecution.
9. Each party will bear their own costs.

**DELIVERED VIRTUALLY AT NAIROBI THIS 29TH DAY OF SEPTEMBER 2022**

**LINNET NDOLO**

**JUDGE**

Appearance:

No appearance for the Appellant

Miss Wambugu for the Respondent

