



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**APPEAL NO. 2 OF 2016**  
**PARBAT SIYANI CONSTRUCTION LTD.....APPELLANT**  
**V**  
**NASHON ARONYA OKOLA.....RESPONDENT**  
**(Being an Appeal against the Judgment and Decree of the Honourable**  
**Senior Principal Magistrate Ms. E.K. USUI issued on the**  
**17<sup>th</sup> December, 2015 in Nairobi CMCC No. 7626 of 2013)**

**RULING**

1. The Appellant filed a Memorandum of Appeal on 21 January 2016 against the judgment and decree of the Chief Magistrates Court.
2. On 26 May 2016, the Respondent filed a jurisdiction anchored Notice of Preliminary Objection against the Appeal and in a ruling delivered on 24 March 2017, the Court overruled the preliminary objection.
3. On 13 February 2018, the Respondent filed an application seeking orders
  1. **THAT** the appeal be dismissed for want of prosecution by the Appellant.
  2. **THAT** the balance of the decretal amount together with interest held in Prime Bank-Kenindia Branch Account No. 3000116818 be released to the Applicant/Respondent's advocates (Barclays Bank-Moi Avenue Branch Account No. 0751075774).
  3. **THAT** costs of this application and appeal be provided for.
4. The Appellant filed a replying affidavit sworn by its Advocate on record, George N. Muriu in opposition to the application.
5. On 12 March 2018, the parties appeared before the Deputy Registrar and consented to the application being heard on 5 April 2018.
6. For unknown reasons, the Appellant and its advocate were not in Court for the hearing of the application.

*The Respondent's case on the application*

7. The Respondent in urging the Court to dismiss the appeal contended that the Appellant had not taken any action to further the Appeal since the delivery of the ruling on the preliminary objection on 18 November 2016.
8. The Respondent exhibited a letter dated 30 January 2018 it had addressed to the Appellant on the failure to take action on the Appeal but which had not elicited any response.
9. The delay, according to the Respondent was a demonstration of lack of interest/diligence on the part of the Appellant and that the delay had occasioned it inconvenience.

*Appellant's response*

10. In the replying affidavit, the Appellant admitted that it had not taken action to further the Appeal for hearing but blamed the failure on lack of proceedings from the trial Court in order to prepare a Record of Appeal.
11. The Appellant exhibited letters dated 25 May 2017 and 19 February 2018 to the Executive Officer, Chief Magistrates Court asking for certified copies of proceedings.
12. It appears that there has been some casualness on the part of the Appellant. The failure to attend Court for the hearing of the application under consideration without explanation is evidence of such casual approach to the Appeal.
13. Considering that the Appellant had made an attempt in 2017 to secure the proceedings from the trial Court and made a follow up when prompted by the Respondent, the Court would give it another opportunity to follow up on the proceedings.
14. The Court therefore declines the invitation by the Respondent to dismiss the Appeal and/or order the release of the amounts deposited with Prime Bank Ltd as security.
15. The Appellant is granted a further 6 months to file a Record of Appeal and is also directed to serve a copy of this order upon the Executive Officer, Chief Magistrate's Court within 10 days of today.
16. Should the Appellant delay further, the Respondent would be at liberty to file an appropriate application.
17. Costs to abide the Appeal.

**Delivered, dated and signed in Nairobi on this 13<sup>th</sup> day of April 2018.**

**RADIDO STEPHEN**

**JUDGE**

**Appearances**

For Appellant Nduati & Co. Advocates (did not attend hearing)

For Respondent Mr. Muyundo instructed by D.W. Muyundo & Associates Advocates

Court Assistant Lindsey