



**In re Estate of the Late Joseph Adiedo alias Joseph Adiedo Odera (Deceased)
(Succession Appeal E10 of 2021) [2025] KEHC 11227 (KLR) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11227 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION APPEAL E10 OF 2021**

A MABEYA, J

JULY 30, 2025

**IN THE MATTER OF THE ESTATE OF THE LATE JOSEPH
ADIEDO ALIAS JOSEPH ADIEDO ODERA (DECEASED)**

BETWEEN

MARGARET OMOLO WERE APPELLANT

AND

JANE ADHIAMBO SANDE RESPONDENT

RULING

1. Before me is a Motion on Notice dated 2/4/2024. The same was brought under sections 1A, 1B and 3A of the *Civil Procedure Act*, Order 42 Rule 35(2) of the *Civil Procedure Rules* and Articles 50(2) and 159 (2) (b) of the *Constitution of Kenya*.
2. The Motion sought that the appeal be dismissed for want of prosecution or for want of compliance with the provisions of the law. The grounds thereof were set out in the body of the Motion and in the Supporting Affidavit of Jane Adhiambo Sande sworn on 2/4/2024.
3. The grounds were that; the Memorandum of Appeal herein was filed on 20/12/2020. That the appellant had failed to set down the matter for either directions or take any steps to prosecute the same. That the proceedings in the Maseno SPMCC Succession Cause No. 73 of 2018 were typed certified and were ready for collection by the appellant on 22/3/2023 but a year later no action had been taken. That despite as aforesaid, the orders appealed against had not been complied with 3 years after they were made.
4. The applicant contended that the respondent had been indolent and was in contempt of the orders of the trial court as no stay had been granted. That the continued existence of the appeal was only meant to obstruct him from enjoying the judgment that was in his favour.



5. I have considered the record. The impugned judgment was made on 8/12/2021. The Memorandum of Appeal was lodged on 20/12/2021 within time. An application for stay was subsequently lodged but was dismissed on 27/2/2023. Ever since, no step has been taken to either lodge the appeal or have it prosecuted.
6. There was an allegation that the proceedings were long typed and ready for collection. Although there was no evidence of that allegation, it is now about 3 years since the appeal was lodged. The record shows that ever since 27/2/2023, when the stay application was dismissed, no action has been taken by the appellant. The appellant must have lost interest in the matter.
7. Suits are presented in Court for prosecution. The tendency to file suits or appeals with a view of packing them in Court and thereby frustrate, punish and annoy one's anniversary must be discouraged. Litigants must be vigilant to have their matters determined. This is one of such matters that were lodged and left for packing in Court.
8. Accordingly, I find the application dated 2/4/2024 to be meritorious and allow the same in terms of prayer Nos. 2 and 4 thereof.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 30TH DAY OF JULY, 2025.

A. MABEYA, FCI Arb

JUDGE

