



**Moblin Limited v Sakwa & another (Civil Appeal E150 of 2015)
[2024] KEHC 7986 (KLR) (Civ) (27 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7986 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E150 OF 2015

RC RUTTO, J

JUNE 27, 2024

BETWEEN

MOBLIN LIMITED APPELLANT

AND

GRACE ATIENO SAKWA 1ST RESPONDENT

CLIFFORD OKETE SWAKA 2ND RESPONDENT

RULING

1. This appeal was scheduled for hearing during Rapid Results Initiative (RRI) session. On the day of the hearing, Mr. Odawa, counsel, was present for the respondent(s). He informed the Court that they had filed their submissions dated 4th May 2024. Counsel further informed Court that the appellant had not complied with the directions of the Court requiring it to file its submissions. He made reference to the record and stated that the appellant lost interest in the case and has not been attending to the matter. He asked the Court to dismiss the appeal with costs.
2. I have perused the record and note that indeed this matter came up before Court on 6th May 2024 when the Court directed the appellant to file submissions on the appeal within 7 days. Subsequently on 29th May 2024, all parties were represented and the Court noted that parties were yet to file submissions and directed that they do file their submissions and that the matter be referred to the service week.
3. As a follow up to the Court's directions, this matter was again listed for mention on, 5th June 2024. There was no appearance for the appellant. Again on 26th June, 2024, there was no appearance by the appellant and it had not filed its submissions as directed. Further, there are no reasons on record as to why the appellant failed to comply with the orders of the Court. I also take note that this is an old matter having been filed way back in 2015, 9 years ago.



4. The right to a fair hearing under Article 50 entails an expeditious determination of disputes. This right comes with an obligation on the litigant who moves the court, in this case the appellant to take necessary steps to prosecute the matter before court. Having failed to take the necessary steps and heed the court's directions to file his submissions the appellant herein is guilty of laches.
5. In the case of *Stephen Muthamia Marete & 2 others v Mary Naitore Kinyua (enjoined as the legal representative of the Estate of Patrick Kinyua Iringo)* [2018] eKLR the court, in a similar matter, held as follows:

“Active prosecution of this appeal would have necessitated submissions by the appellant. Though the respondent's submissions are on the record they are of not much help in debating the main points raised in the memorandum of appeal as they just seek to confirm that the magistrate's court's decision was right.

In my view, when an appellant has been ordered to file written submissions and he fails to do so as the appellants have done in this case, the court should find, as it does in this case, that the appellant has failed to prosecute his appeal, or is no longer interested in pursuing it.”
6. Consequently, I find that the appellant herein has failed to prosecute its appeal by failing to comply with the Court's directions and in particular by failing to file its submissions. In the circumstances, I dismiss the appeal for want of prosecution with no orders as to costs.

RHODA RUTTO

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 27TH DAY OF JUNE, 2024

