



**Zohaib Trading Limited v Owegi & 2 others (Civil Appeal
E029 of 2023) [2024] KEHC 7660 (KLR) (27 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7660 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CIVIL APPEAL E029 OF 2023**

**KW KIARIE, J
JUNE 27, 2024**

BETWEEN

ZOHAIB TRADING LIMITED APPELLANT

AND

CHRISPINE OWINO OWEGI 1ST RESPONDENT

STEVEN ODHIAMBO 2ND RESPONDENT

JEFF OMONDI 3RD RESPONDENT

RULING

1. The 1st respondent moved the court through a Notice of Motion dated the 8th day of February 2024 under sections 1A, 1B and 3A of the [Civil Procedure Act](#), Order 42 Rule 35 (2) and Order 51 Rule of the [Civil Procedure Rules](#) and Article 159 (2) (d) of the [Constitution of Kenya](#). She is seeking the following orders:
 - a. That the appeal herein be and is hereby dismissed by want of prosecution.
 - b. That the Appellant bear the costs of this application.
2. The application was premised on the following grounds:
 - a. By an Order given on 27th June 2023, this Honourable Court granted the Appellant leave to file its Record of Appeal.
 - b. The Appellant has failed to prosecute its Appeal since 2023.
 - c. The Appellant has also not demonstrated effort to prosecute the Appeal by requesting typed proceedings, typed ruling, or court order.
 - d. The appellant has also not filed a Record of Appeal since.



- e. The Appellant continues to unduly enjoy orders of stay of execution, delaying the progress of the matter, which could have been proceeding by now.
 - f. The 1st Respondent stands prejudiced as his claim in the lower Court remains unprosecuted at the behest of the Appellant herein.
 - g. The law under Order Rule 35(2) of the [Civil Procedure Rules](#) empowers this Honourable Court to dismiss an Appeal for want of prosecution.
 - h. It is hereby in the interest of justice that the application be allowed as prayed.
3. The appellant opposed the applications and stated:
 - a. The appellant cannot be blamed for the delay.
 - b. That the application lacks merit.
 4. Order Rule 35(2) of the [Civil Procedure Rules](#) provides:

Where the agreement is for the delivery of any property, or for the doing or the refraining from doing, any particular act, the estimated value of the property to be delivered, or to which the specified act has reference, shall be stated in the agreement.
 5. The first respondent, therefore, cited in applicable law.
 6. The appellant has satisfactorily explained the cause of the delay in filing the record of appeal, which has since been filed. The application has, therefore, been overtaken. The application is dismissed, and the costs will abide by the outcome of the appeal.

DELIVERED AND SIGNED AT HOMA BAY THIS 27TH DAY OF JUNE 2024.

KIARIE WAWERU KIARIE

JUDGE

