



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
CIVIL APPEAL NO. 8 OF 2001

TERESIA NJOKI NJERU APPELLANT
VERSUS
TRUFOSA NJERU RESPONDENT

RULING

1. The Respondent by his Chamber Summons dated 19.10.2004 seeks Orders that the Appeal herein be dismissed under Order XLI Rule 31(i) for want of Prosecution. The reason is that since 4.12.2003 when the matter was adjourned, no action has been taken by the Appellant to prepare the record of Appeal as ordered on that day nor set it down for hearing.

2. The only ground raised in opposition is that the Application is premature as Order XLI Rule 31(i) allows for dismissal of Appeals for want of Prosecution only after and not before directions are taken. In this case, I am told that no directions were taken and therefore the Appeal could not be listed for hearing in any event.

3. Order XLI Rule 31(i) provides as follows-

“Unless within three months after giving of directions under Rule 8B the Appeal shall have been set down for hearing by the Appellant, the Respondent shall be at liberty either to set down the Appeal for hearing or to apply for Summons for dismissal for want of Prosecution.”

Rule 8B(i) provides thus;

“On notice to the parties delivered not less than twenty-one days after the date of service of the Memorandum of Appeal the Registrar shall list the Appeal for giving of directions by a Judge in Chambers.”

4. Read together and looking at the record in this matter, directions must be taken and only three months after may an Application under Order XLI Rule 31(i) lie. In this case, I agree with Counsel for the Respondent that it is not a fit case in its circumstances for this Court to invoke the powers to dismiss for want of Prosecution.

5. The Application dated 19.10.2004 must and is hereby dismissed with costs. Orders accordingly.

Read in Open Court this 23rd day of February 2005

I. LENAOLA

JUDGE

In the presence of;

Mr. Okwaro for the Applicant

Mr Mogusu for the Respondent

I. LENAOLA

JUDGE



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