



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT GARISSA

CIVIL APPEAL NO. 3 OF 2017

ABDI NUROW.....APPELLANT/RESPONDENT

VERSUS

ISSACK EDEN GONJORO.....RESPONDENT/APPLICANT

RULING

1. **Isaack Eden Gonjoro** (the Respondent herein) filed an application dated 16th February 2022 seeking the following Orders;
 - a. **That the Honourable Court be pleased to dismiss this appeal for want of prosecution and for failure by the appellant to take necessary steps to prosecute the appeal.**
 - b. **That the appellant be condemned to bear costs of this application and the appeal.**
2. The application is premised on the provisions of **Order 42 Rule 35 of the Civil Procedure Rules**, the grounds on the face of the application, and the averments made in the supporting affidavit of the Respondent.
3. The appeal herein arose from the Judgement in Manderu SRM Civil Suit No. 4 of 2009 delivered on 19/5/2009. Being, dissatisfied by the impugned judgement, the appellant filed this appeal on 11/6/2009 and record of appeal on 19/11/2009. The Respondent averred that it is now thirteen (13) years since the appeal was filed and no reasonable steps had been taken to prosecute the same.
4. The Appellant was served with the application but has not filed any response to the same.
5. I have looked at the Court of record of appeal. This appeal was filed on 9/6/2009. The record of appeal was filed on 19/11/2009. The original trial court file was forwarded to this court on 13/6/2012. Waweru J certified the appeal ready for hearing under the provisions of **Order 42 Rule 13 of the Civil Procedure Rules** on 19/6/2014. The matter was referred to this court by Aburili J vide a Ruling dated 26/1/2015. On 22/9/2015, the Respondent sought to strike out the appeal for want of prosecution. This court however dismissed the application on 27/7/2017 on grounds that the same had not been properly filed. Since then, the appellant has not set down the appeal for hearing.
6. The provisions of Order 42 Rule 35 (1) provides as follows;

Dismissal for want of prosecution [Order 42, rule 35.]

(1) Unless within three months after the giving of directions under rule 13 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 by summons for its dismissal for want of prosecution.

7. In this case, the proceedings are clear. The appeal was confirmed as ready for hearing on 19/6/2014. The appeal is yet to be set down for hearing since then. No directions have been made in the file since the delivery of this court's Ruling dated 27/7/2017.

8. The appellant has been well aware of these proceedings and has not set the same down for hearing despite the Respondent's earlier application to dismiss the appeal for want of prosecution.

9. In line with the provisions of **Order 42 Rule 35 of the Civil Procedure Rules** this is a proper case for dismissal. The upshot of my finding is that the application dated 16/2/2022 has merit and the same is allowed as prayed.

10. Consequently, the appeal herein is hereby dismissed with costs to the Respondents.

11. It is so ordered.

READ, DELIVERED AND SIGNED IN THE OPEN COURT AT GARISSA THIS 25TH MARCH, 2022

.....

HON. E.C.CHERONO

ELC JUDGE

In the presence of:

- 1. Mr. Kivuva for the Applicant**
- 2. Respondent/Advocate: Absent**
- 3. Ijabo: Court Assistant**



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