

Ekobu v Amoding (Civil Appeal 10 of 2022) [2024] UGHC 793 (18 July 2024)

[2024] UGHC 793

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The background of this appeal is on the record. I have not examined appeal as it has not been argued.

I will only consider procedural culpabilities in this appeal, and then make the 25 appropriate conclusion.

The record shows that multiple adjournments and directions were made to S enable the appellant to have the occasion to either argue the appeal orally or have it considered after the appellant filing and serving upon the respondents the necessary written submissions regarding his appeal in vain.

The background to the above mentioned errors is that this appeal was filed on 10th March 2022 by M/s Ogire and Company Advocates on behalf of the 10 appellant.

Several adjournments were made diverse days such as on 21/06/2022, 06/09/2022, 13/02/2023, 02/05/2023, 21/06/2023, 11/09/2023, 04/10/2023, 02/11/2023, 07/12/2023, 25/01/2024, 29/02/2024 and 04/04/2024. This was in an effort to enable the appellant prosecute his appeal.

Most especially on 29th February 2024, this Honourable Court adjourned the matter to the 4th of April 2024, in the presence of the Respondent and her counsel Ms. Patricia Atuko of M/s Legal Aid Project of the Uganda Law Society.

Hearing notices were then extracted by counsel for the respondent and it was served on the appellant, who acknowledged receipt and as evidenced by the 20 affidavit of service deposed by a one Ewanu Eugene which was filed in this court on 4th April 2024.

On 4th April 2024, the appellant who had been served was still absent. In the presence of counsel, Patricia Atuko for the respondent, the court directed the parties to file and serve their written submissions, to which the respondent 25 complied.

Still, the appellant did not comply. The Deputy Registrar, therefore, forwarded the file to me on 28/05/2024 for my action.

To date it clear to me that since 2022, the appellant seems not to be interested S in prosecuting his appeal and thus can be said to have abandoned it.

From the structure of events above, it is evident to me that the appellant, after having filed this appeal on 10th March 2022 and even after being given notices and schedules for filing his written submissions so that the appeal is argued, has

- failed to do so, signifying that he is no longer interested in prosecuting his appeal 10 yet an appeal can only be determined upon parties arguing the grounds framed for the appeal by pointing out a party's disagreement with the decision of the lower trial court before the appellate court.
- 2. Determination of the Appeal:

- The law relating to the hearing of appeals is found in Order 43, rule 13 of the Civil 15 Procedure Rules, provides for the right to begin as it states thus:
 - (1) On the day fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal.
 - (2) The court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in that case, the appellant shall be entitled to 20 reply.

The above provision of the law necessitates the hearing of the appellant with the practice of Honourable Court being that the hearing of an appeal is presented by parties either orally or by way of final written submissions.

In this appeal, the parties were directed to file written submissions. The 25 appellants did not do so and since it is the appellants who have the right to begin, the respondent presumably waited for and just decided to file written submissions though not in response.

An appeal is considered non-prosecuted as there would be no arguments \$5\$ substantiating the grounds raised.

Since an appellate court thus court cannot, on its motion, assume the faults which the appellant had with the decision of the lower trial court and is thus aggrieved with, then since the appellant has failed to argue his appeal, then the assumption is that he is no longer interested in the appeal.

Further, under Order 43 Rule 14 (1) of the Civil Procedure Rules, it is provided that an appeal may be dismissed where an appellant does not prosecute his/her appeal.

It provides that;

any reason for not doing either.

- (1) Where on the day fixed, or on any other day to which the hearing may be 15 adjourned, the appellant does not appear when the appeal is called on for hearing, the court may make an order that the appeal be dismissed.

In this appeal, the appellant has failed on several occasions to prosecute his appeal by filing his written submissions or indicate to the court whether he was to make oral submissions, and no reasons have been given for not doing so.

This is even after he had been served with the process of court but he remained adamant. He has neither appeared in court, nor filed his submissions or shown

The failure of the appellant to file written submissions without any lawful reasons signifies lack of further interest in pursuing the appeal and as such the appellant 25 is taken to have abandoned his appeal.

That being the case, this Honourable Court is left with no option but to dismiss Civil Appeal No. 10 of 2022 for want of prosecution by virtue of Order 43 Rule 14 (1) of the Civil Procedure Rules.

Accordingly, Civil Appeal No. 10 of 2022 is dismissed with costs awarded to the respondent.

I so order.

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Hon. Justice Dr Henry Peter Adonyo

Judge

18 July 2024

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Prepared on 14 October 2026 · Esheria