



REPUBLIC OF KENYA



**Oneyo & another v Njagi (Civil Appeal 161 of 2018)
[2022] KEHC 12546 (KLR) (Civ) (25 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 12546 (KLR)

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

CIVIL

CIVIL APPEAL 161 OF 2018

JK SERGON, J

AUGUST 25, 2022

BETWEEN

OBONYO WALTER ONEYO 1ST APPELLANT

THE STANDARD NEWSPAPERS GROUP LTD 2ND APPELLANT

AND

BERNARD MWANGI NJAGI RESPONDENT

RULING

1. The appellants herein took out the motion dated April 12, 2022 in which they applied to have the order made on April 12, 2022 dismissing this appeal to be set aside. The appellant also sought for the interim order for stay to be reinstated. The affidavit and a supplementary affidavit sworn by Lucy Muriithi were filed in support of the aforesaid motion. The respondent filed the replying affidavit sworn by Wangalwa Oundo to oppose the motion.
2. I have considered the grounds stated on the motion and the facts deponed in the rival affidavits. It is the submission of the appellants that the appeal was dismissed for want of prosecution on April 1, 2022. It is stated that the appellants' advocate was not aware of the date the appeal was listed for a notice to show cause.
3. The appellants have pointed out that they have filed a record of appeal and what is missing is the extracted decree and certificate of cost which are yet to be issued by the trial court.
4. In response, the respondent opposed the motion arguing that there is no evidence that the appellants have prepared and filed a record of appeal. The respondent further argued that the appellants have failed to fulfil the conditions imposed for the grant of the application for stay.



5. In response to the respondent's assertion the appellants stated that the respondent failed to supply the appellants with the duly executed bank opening forms thus preventing the appellants from depositing the decretal sum as security.
6. Having considered the material placed before this court, it is clear that this court dismissed the appeal for want of prosecution on April 1, 2022. The record shows that the respondent's advocate was present in court while the appellants' advocate was absent. In the supporting affidavit, the appellants aver that they were not aware of the hearing date of the notice to show cause. The respondent did not controvert this assertion. Had the appellants been aware of the date fixed for the hearing of the notice to show cause, they would have had a chance to explain why the appeal should not be dismissed for want of prosecution.
7. They have stated that it took time for the trial court to provide them with a copy of the decree. The respondent has not also controverted the assertion made by the appellants that the respondent had failed to supply to the appellants the duly executed bank account opening forms to enable them deposit the decretal sum as security for the due performance of the decree.
8. In the end, I find the appellants' motion dated April 12, 2022 to be meritorious hence it is allowed. Consequently, the order dismissing the appellants' appeal issued on April 1, 2022 is set aside. The appeal together with the order for stay of execution of the decree pending appeal are reinstated. Costs of the application to abide the outcome of the appeal. The record of appeal to be served. The file to thereafter be placed before a judge for admission and further directions on October 26, 2022.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 25TH DAY OF AUGUST, 2022.

J. K. SERGON

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent

