



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

CIVIL APPEAL NO. 646 OF 2016

MBURU BASHIRAPPELLANT

VERSUS

BILLY LUBANGA NAMAYIRESPONDENT

(Being an Appeal from the Judgment of the Chief Magistrate's Case no. 2183 of 2014 delivered on 5th October, 2019)

RULING

On 30th January, 2020 Kamau J delivered a ruling relating to an application dated 20th March, 2019 which sought the dismissal of the Memorandum of Appeal in this matter for want of prosecution, that the money held in the joint fixed deposit account in the names of advocates, be released to the advocate for the respondent, and that the appellant do comply with the orders of the lower court relating to costs.

The application was dismissed but the Judge ordered that the record of appeal be served within 90 days from the date of that ruling, failure of which would lead to automatic dismissal of the appeal and release of the decretal sum as prayed.

The judge also ordered that the Deputy Registrar do facilitate the typing of the judgment and proceedings and placing of the lower court file within 60 days from the date of the ruling. Those conditions were not met and so the appeal stood dismissed at the expiration of the timelines set.

There is now before me an application dated 12th February, 2021 seeking to reinstate the appeal and list the same for directions, and that the court grants leave to extend the time limited for filing the record of appeal.

The application is supported by grounds set out on its face, and a supporting affidavit sworn by the advocate for the appellant. There is a replying affidavit sworn by the advocate for the respondent opposing the application.

In the grounds set out by the appellant, it is stated that the lower court proceedings were obtained in January, 2021 and that, the appellant cannot be blamed as the processing of those proceedings was not within his control. It was also not possible to comply with the time lines set by the court because the appellant was frustrated by the emergence of Covid 19, which altered all the operations of the court and other business.

I have read the affidavit in reply and noted the concern of the respondent in this matter. With respect, I agree that the onset of Covid 19 pandemic destabilised many operations including the court process. Further, it was the Deputy Registrar of this court who was to facilitate the availability of the proceedings and there is no evidence that any compliance was met in that regard. The appellant must have been a victim of the systemic challenges that have affected the administration of justice in our courts.

I am not persuaded that I should dismiss the application and therefore, this appeal having been dismissed by operation of timelines set by Kamau J, I hereby order that the same is now reinstated unconditionally. Leave is now extended for the filing of the record of appeal, which I note has already been lodged, and shall be deemed to be filed within 14 days from today on payment of the requisite filing fees.

The Deputy Registrar of this court shall now call for the original lower court file within the next 30 days so that the appeal is admitted for hearing and directions given. The costs shall abide by the decision of the appeal.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF MAY, 2021

A. MBOGHOLI MSAGHA

JUDGE

In the presence of:

Mr. Gitari h/b for Mr. Mbigi for the appellant

Ms. Muteti for the respondent.