



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 582 OF 2019

VISIONARY SACHOOL LIMITEDAPPELLANT

VERSUS

FRANCIS MARITIM..... RESPONDENT

RULING

- 1) The subject matter of this ruling is the motion dated 24th February 2021 in which the appellant/applicant sought for the appeal which was dismissed on 8th January 2021 to be reinstated. The appellant filed the affidavit sworn by George Omwanza Okenyuo in support of the motion.
- 2) The respondent filed the replying affidavit sworn by Stephen Kipkorir Bundotich to oppose the motion. When the motion came up for interpartes hearing, learned counsels recorded a consent order to have the application disposed of by written submissions.
- 3) I have considered the grounds stated on the face of the motion and the facts deponed in the affidavits filed in support and against the application. I have further considered the rival written submissions. Though the appellant/applicant has indicated that this appeal was dismissed on 8th January 2021, it is apparent from the court record that the appeal was actually dismissed on 27th January 2021 by Lady Justice Meoli who allowed the respondent's motion dated 11th November 2020 as unopposed.
- 4) It is the submission of the appellant/applicant's advocate that he experienced internet connectivity challenges hence he did not attend the virtual court session on 27th January 2021 and therefore it was not clear what transpired on that date. It is for this reason that this court is beseeched to reinstate the dismissed appeal to avoid making the appellant suffer due to internet connectivity challenges.
- 5) The appellant's learned advocate averred that he only came to learn that the appeal had been dismissed when he sought for a mention date from the court. The respondent pointed out that the application seeking to have the appeal dismissed dated 11th November 2020 was served upon the appellant's advocates on 1st December 2020.
- 6) It is stated that the appellant was only woken up from his slumber after its advocate was served with a notice of taxation. The appellant has urged this court to deem the appellant's replying affidavit dated 9th June 2021 in response to the respondent's application dated 11th November 2020 as duly filed.
- 7) The respondent urged this court to take cognizance of the fact that the appellant has not explained the reason why it did not file a response to the respondent's application dated 11th November 2020.
- 8) Having considered the rival submissions plus the material placed before this court, it is apparent that some facts are not disputed. **First**, is that the motion dated 11th November 2020 was served upon the appellant on 1st December 2020 or thereabouts. **Secondly**, that the appellant's advocate was aware that the aforesaid application was fixed for interpartes hearing on 27th January 2021. **Thirdly**, that despite having been served with the application dated 11th November 2020, the appellant did not deem it fit to file a response to the aforesaid motion. **Fourthly**, that the appellant did not take any step to inquire about what transpired in court on 27th January 2021.
- 9) It is apparent that the appellant's advocate wrote an email to the court on 24th February 2021 seeking for a mention date. I am persuaded by the respondent's submission that the appellant was only woken up to act when it was served with a notice of taxation. The record shows that Lady Justice Meoli proceeded to allow the respondent's motion dated 11th November 2020 as unopposed after satisfying herself that the appellant was served with the motion and that it had not bothered to file any response.
- 10) The court also noted that the appellant was aware of the interpartes hearing date but it did not bother to attend court. The appellant has so far failed to explain why it did not file a response to the respondent's motion despite having been served nearly two months before the date of interpartes hearing.

11) In the end, I find that the appellant/applicant has failed to convince this court why the dismissal order should be set aside. Consequently, the appellant's motion dated 24th February 2021 is found to be without merit. The same is dismissed with costs to the respondent.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 26TH DAY OF AUGUST, 2021.

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent