REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CIVIL APPEAL NO. 106 OF 2021

ERIC ACHANGA .....APPELLANT

VERSUS

JAMES MINCHA NDUBI ..... RESPONDENT

RULING

1. Having considered the application dated the 6th December 2021, the rival affidavits, the oral submissions and the proceedings that led to the dismissal of the appeal, I find as follows; the appeal was dismissed because the applicant failed to file the Record of Appeal within the period the court gave him. Counsel for the applicant explained that they sought proceedings from the lower court but there was a delay in getting the said proceedings.

2. The Respondent has argued that this court is *functus officio*. The appeal has not been heard and therefore this court is not *functus officio.*

3. I will accept the explanation given by the applicant as detailed in his affidavit in support of the application. I therefore grant the following orders;

(1) The appeal being **HCCA No. 106 of 2021 Erick Achanga vs James Mincha Ndubi** is hereby reinstated for hearing and determination.

(2) The appellant shall file and serve complete Record of Appeal within 45 days from today's date.

(3) The stay of execution orders issued on the 4/10/2021 are reinstated and shall be in force until the determination of the appeal.

(4) Mention on the 24/2/2022 for directions.

DATED, SIGNED AND DELIVERED AT KISII THIS 17TH DAY OF DECEMBER 2021.

R.E. OUGO

JUDGE

In the presence of:

Mr. Ndolo **For the Applicant**

Miss Moguche **For the Respondent**

Kelvin Isindu **Court Assistant**