



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAJIADO

(Coram: Odunga, J)

MISCELLANEOUS CIVIL APPLICATION NO. 18 OF 2020

CIVICOPE LIMITED.....APPLICANT

VERSUS

GILBERT KIMATARE NAIRI AND LILIAN NADUPOI NAIRI

(Suing as Personal Representatives of the Estate of JACKLINE

SEIN LEMAIYAN.....RESPONDENTS

RULING

1. The Applicant herein applied for extension of time to appeal against the decision of Loitoktok Chief Magistrate's Court in CMCC No. 19 of 2019. It also applied for stay of execution of the judgement and/or decree therein pending the hearing and determination of the intended appeal.

2. On 14th May, 2020 this Court granted a temporary order of stay of execution of the said judgement and/or decree pending *inter partes* hearing thereof and directed the applicant to serve the application and its submissions on the Respondents. The Respondents were directed to respond hereto within 14 days of service thereof. The Applicant was further directed to extract the said directions and serve them on the Respondents. In addition, parties were directed to furnish the court with soft copies of their pleadings.

3. After the expiry of the period limited for service by the Applicant on the Respondents, this court took the liberty of inquiring from the Applicant's advocates on record whether they had complied with the directions relating to service through the provided email address. However, to date no response has been forthcoming from the said firm of advocates. Additionally, the Applicant has not furnished the soft copies of its pleadings as directed.

4. Section 1A(3) of the *Civil Procedure Act* provides as hereunder:

A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court.

5. One of the overriding objectives of the *Civil Procedure Act* is the facilitation of expeditious resolution of the civil disputes governed by the Act. The direction that Advocates and parties do furnish the Court with soft copies of their pleadings and submissions is geared towards that same objective and where they fail to comply therewith, it amounts to a failure to comply with a statutory mandate. The Court of Appeal in the case of **Hunker Trading Company Limited vs. Elf Oil Kenya Limited Civil Application No. Nai. 6 of 2010** held *inter alia* that:

“The “O2 principle” poses a great challenge to the courts in both the exercise of powers conferred on them by the two Acts and rules and in interpreting them in a manner that best promotes good management practices in all the processes of the delivery of justice. In the court's view this challenge may involve the use of an appropriate summary procedure where it was not previously provided for in the rules but the circumstances of the case call for it so that the ends of justice are met. It may also entail redesigning approaches to the management of court processes so that finality and justice are attained and decisions that ought to be made today are not postponed to another day.”

6. By failing to comply with the directions given by this Court the applicant herein has clearly violated the said overriding objective.

7. In the premises, the order which commend itself to me and which I hereby grant is that the application dated 7th May, 2020 be and is hereby struck out but with no order as to costs.

8. It is so ordered.

Read, signed and delivered in open Court at Machakos this 30th day of June, 2020.

G V ODUNGA

JUDGE

Delivered in the absence of the parties.

CA Geoffrey