

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL APPEAL NO. 614 OF 2011

CHELI & PEACOCK

MANAGEMENT LTD.....1ST APPELLANT/RESPONDENT

NOAH MUYA ADIRA2ND APPELLANT/RESPONDENT

VERSUS

DANIEL KIMANI KAMAU.....RESPONDENT/APPLICANT

RULING

1. The application dated 27th November, 2019 seeks orders that:

- (1) That, the appeal be listed before a judge and that it be dismissed for want of prosecution.**
- (2) That the order of stay of execution granted on 1st February, 2012 be discharged.**
- (3) That the cost of this application be borne by the Appellant.**

2. It is stated in the grounds and the affidavit in support of the application that judgment was entered in favour of the Applicant on 22nd November, 2011. That the Respondents subsequently filed the Appeal herein and obtained stay of execution orders upon furnishing a bank guarantee as security for the due performance of the decree. The Applicant accuses the Respondent of inertia and states that the Respondents have not taken any steps to file the Record of Appeal and prosecute the Appeal.

3. The application is opposed. It is averred in the replying affidavit and further affidavit that the Respondents applied to be supplied with certified and typed copies of the lower court proceedings but that they are yet to be furnished with the same. That the Appeal herein has been mentioned severally before the Deputy Registrar to have the lower court file availed but the same is yet to be provided despite the Deputy Registrar having taken steps to summon the Executive Officer of the Lower Court. It is contended that the Respondents are willing and ready to proceed with the Appeal if the lower court proceedings are availed.

4. I have considered the application, the response to the same and the written submissions filed by the respective counsel for the parties.

5. I have perused this file. It is apparent that the lower court file has not been availed despite several mentions before the Deputy Registrar and issuance of summons to the Executive Officer. These are uncontested facts. The responsibility of availing the lower court proceedings lies squarely with the court. The Respondents cannot be faulted as they are not the custodians of the lower court file. The delay herein is inordinate and unfortunate. I refer the matter back to the Deputy Registrar to follow up on the matter of the lower court file to conclusion so that the parties can take any other steps. Consequently, the application is dismissed with costs in cause.

Date, signed and delivered at Nairobi this 25th day of June, 2020

B. THURANIRA JADEN

JUDGE