

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL APPEAL NO. 150 OF 2015

MOBLIN LIMITED.....APPLICANT/RESPONDENT

VERSUS

GRACE ATIENO SAKWA.....1ST RESPONDENT/APPLICANT

CLIFF OKETE SWAKA.....2ND RESPONDENT/APPLICANT

RULING

1. The application dated 24th May, 2017 seeks orders that the court be pleased to **“strike out the Notice of Appeal and dismiss the Appeal for want of prosecution.”**

2. It is stated in the grounds and the affidavit in support that the Applicant has not taken any steps to prosecute the Appeal herein. That the delay herein has occasioned loss to the children of the deceased who was the sole breadwinner of the family. That the children of the deceased who died in a road traffic accident have been rendered destitute and cannot meet their basic needs or attend school. The court was urged to release the decretal sum of Ksh. 704,658/= deposited in a joint account.

3. The application is opposed. It is stated that the Appeal herein is against both liability and quantum. The delay in prosecuting the Appeal is blamed on failure by the lower court to supply the Respondent with the typed proceedings and judgment of the lower court. That no directions have given in accordance with Section 79B Civil Procedure Act.

4. The application was disposed of by way of written submissions. I have considered the said submissions.

5. The Memorandum of Appeal herein was filed on 10th April, 2015. By the time the application at hand was filed on 24th May, 2017 a period of over two years had lapsed.

6. The delay has been explained. The letters by the Respondent exhibited herein requesting for the certified copies of the typed proceedings, judgement and Decree have no response from the lower court and have not been controverted by any other evidence. However, there is no evidence of any steps taken by the Respondent to follow up on the said proceedings. The Record of Appeal is yet to be compiled and filed and directions under Section 79B Civil Procedure Act given.

7. Taking into account the undisputed averment by the Respondent that the Appeal herein is both on liability and quantum, it is not possible to release the decretal sum at this stage.

8. With the foregoing, this court is inclined to allow the Appeal to proceed on merits. Consequently, I dismiss the application with costs in cause. The Record of Appeal to be compiled and served and the Appeal to be fixed for directions within 90 days from the date herein. In default the Appeal to stand dismissed.

Dated, signed and delivered in Nairobi this 28th day of March, 2019

B. THURANIRA JADEN

JUDGE