

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 59 OF 2003

SASINI TEA & COFFEE LTD.....APPELLANT/APPLICANT

VERSUS

PETER ALUOCH WANGWA.....RESPONDENT

R U L I N G

1. This ruling relates to the Notice of Motion dated 11th March, 2019 brought forth by the appellant/applicant herein. The same is supported by the grounds stated on its body and the facts deponed to in the affidavit of *Kelvin Gitonga Mutegi*. The applicant is seeking to have the order issued by this court on 5th November, 2018 set aside and the appeal consequently reinstated for hearing.
2. The explanation offered by the abovementioned deponent, being the advocate for the applicant, is that the failure to file the supplementary record of appeal as per this court's directions of 27th July, 2018 was occasioned by the disappearance of the lower court file from the registry at Gatundu Law Courts.
3. The said deponent further explained that there had recently been a fire incident at the aforesaid Law Courts resulting in the destruction of a number of files including the relevant lower court file. Resultantly, the advocate was forced to apply for its reconstruction.
4. It is also his assertion that the applicant was unable to file its application for reinstatement in good time for the reason that the appeal file could not be traced from the appeal's registry and only resurfaced recently, carefully adding that the respondent will suffer no prejudice should the orders sought be granted.
5. I have considered the grounds set out in the Motion as well as the facts appearing on the affidavit in support thereof. Upon perusal of the record, I am able to ascertain that the lower court file was reconstructed and forwarded to the deputy registrar vide a letter received on 10th July, 2018.
6. From the foregoing, it is clear that the reconstructed file was available as at 27th July, 2018 when this court ordered the applicant to file a supplementary record of appeal. Furthermore, the record shows that on the said 27th of July the applicant mentioned to this court that its appeal was not ready for the reason that the decree was not ready.
7. When the matter came up again before this court on 5th November, 2018 the appellant notably absent and there was non-compliance with the order of 27th July, 2018. Moreover, there is nothing in the record to indicate the appeal file went missing soon thereafter as claimed by the applicant.
8. Suffice it to say that I have observed that the supplementary record of appeal was filed on 13th September, 2018 albeit outside the timelines ordered by this court. I have also considered that the Motion stands unopposed.
9. In the premises, I will exercise my discretion in allowing the Motion as prayed. However, given that this is quite an old appeal, I hereby order the appellant/applicant to prosecute the same within 60 days from today, failing which the appeal shall stand dismissed. Costs shall abide the outcome of the appeal.

Dated, signed and delivered at **NAIROBI** this **20TH** day of **JUNE, 2019**.

.....

L. NJUGUNA

JUDGE

In the presence of:

..... for the Appellant/Applicant

..... for the Respondent