

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 239 OF 2017

RAPHAEL MUTUMA MWITI.....APPELLANT/RESPONDENT

VERSUS

FLORENCE MUKONYO MAINGL.....RESPONDENT/APPLICANT

RULING

In the application dated 27th May, 2017 the applicant sought the dismissal of appeal for want of prosecution, and in the alternative the appeal be dismissed for being filed out of time without leave of the court. There are grounds appearing on the face of the record alongside an affidavit sworn by Cosmas Ngala on 27th May, 2019.

The judgment that led to the appeal was delivered on 7th October, 2016. The appellant filed a Memorandum of Appeal but thereafter did not pursue copies of the proceedings and judgment to prepare the record of appeal. As at the time of writing this ruling, there were two documents, one dated 17th July, and filed on the same day with a title "**certified correct and prepared to accord with copies as supplied by the subordinate court**". The second is dated 26th and filed on 27th August, 2019 with a title "**supplementary record of appeal**". Both these documents were filed without leave of the court. However, no issue has been raised by the respondent relating to the said late filing.

There has been laxity on the part of the appellant who even by 14th October, 2019 had not complied with the order to file submissions to the Notice of Motion. That notwithstanding, bearing in mind that now the record of appeal has been filed, it will not be in the interest of justice to dismiss the appeal for want of prosecution as sought by the applicant in the application before me. Accordingly, the application is dismissed but the appellant shall pay the costs occasioned by this application. The lower court file shall now be availed to facilitate the admission of the appeal and directions so that the appeal can be heard and determined on merit.

Dated, signed and delivered at Nairobi this 19th day of December, 2019.

A. MBOGHOLI MSAGHA

JUDGE