

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 2 OF 2012

ROSEMARY NJERI MUIRURIAPPELLANT/APPLICANT

VERSUS

MARGARET NJERI KIMANIRESPONDENT

RULING

There is a judgment in favour of the respondent delivered on 10th January, 2012. After that judgment an application for stay of execution was filed pending the hearing of the appeal. The record of appeal was filed on 20th September, 2013.

On 27th March, 2017 the appellant filed an application by way of Notice of Motion under Sections 1A, 1B and 3A of the Civil Procedure Act and Article 159 of the Constitution, to vacate or discharge the orders made on 6th September, 2016 wherein the appellant was ordered to file a decree within 30 days so that admission of the appeal may be recorded. In default the appeal was to stand dismissed. The record shows that the advocate for the appellant had been served with a hearing notice but did not attend court on 6th September, 2016.

The period of 30 days from 6th September, 2016 ended on or about 7th October, 2016. As at the time the application dated 27th March 2017 was being filed, the appeal going by the order of 6th September, 2016 was none existent as it stood dismissed. Any submissions therefore relating to an appeal that does not exist are unsustainable.

I have considered the submissions by counsel on record but reiterate that after the expiration of 30 days from 6th September, 2016, the court is unable to revisit these proceedings. This is not an application for review and I cannot reinstate orders that do not exist. If there is any recourse in law or fact then the appellant is in the safe hands of counsel for advice.

It is instructive to note that even in this application, the decree that was ordered to be filed has not been displayed. I have been left with no alternative but to dismiss the application with costs to the respondent.

Orders accordingly.

Dated, signed and delivered at Nairobi this 24th day of May, 2018.

A. MBOGHOLI MSAGHA

JUDGE