

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL 483 OF 2013

BENSON ONGAKI.....APELLANT

VERSUS

CAROLYNE WANGUI WACHIRA.....1ST RESPONDENT

ANTHONY MUTHOMI MATI.....2ND RESPONDENT

RULING

By an application dated 16th August, 2017 the respondents have applied for dismissal of the appeal herein for want of prosecution. The application is brought under Order 42 Rule 35 of the Civil Procedure Rules. The reasons are set out on the face of the application and there is a supporting affidavit sworn by the advocate for the respondents.

The application is opposed and the appellant has filed a replying affidavit. The appellant has demonstrated in the replying affidavit that, over a period of time, he has communicated to the Deputy Registrar requesting for certified copies of the proceedings and judgment of the lower court to no avail. It is clear that the appellant is a victim of systemic shortcomings of the courts and the delay in lodging the appeal is not deliberate. A mistake not entirely within the parties' making as in the instant case cannot be visited upon the parties.

The appellant has not been accused of taking advantage of any order because his application for stay of execution was dismissed by the court on 12th September, 2014. Taking into consideration the submissions by the parties herein, this application must fail. The same is accordingly dismissed.

I direct that the lower court record shall be provided within 14 days from the date of this ruling and thereafter the record of appeal to be filed within 14 days of receipt of the proceedings by the appellant. There is no order as to costs.

Dated, signed and delivered at Nairobi this 13th Day of June, 2018.

A. MBOGHOLI MSAGHA

JUDGE