



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CIVIL APPEAL CASE NO. 5 OF 2013

KENYA TEA DEV. AGENCY.....1ST APPELLANT/APPLICANT

GITHONGO TEA FACTORY.....2ND APPELLANT/APPLICANT

VS

HENRY G. KIAMBATI.....RESPONDENT

JUDGEMENT

Henry Kiambati sued Kenya Tea Development Authority in Meru CMC C.C NO. 19 of 2009 seeking payment of Kshs 594,935.15 and payment of any future unlawful deductions during the pendency of the suit as well as costs of suit and interest.

The suit was determined on 5th day of October 2012 awarding Kshs 594, 935.15 together with interest and costs as prayed in the plaint. The appellant/1st Defendant being aggrieved by the decision of the trial magistrate filed an appeal on 14th January 2013. From the onset of appeal the counsel for the appellant appears to have always send counsels to hold his brief and after application for stay of execution was withdrawn for having been overtaken by events on 30.11.2013. It was only on 22.9.2016 that the Respondents counsel applied to have appeal dismissed because appellants had paid the decretal sums. Directions were taken that Respondents Counsel applies formally for dismissal of appeal.

On 9.3.2017 again the court moved on its own motion to give directions on hearing of appeal and a date was set for the same on 13.3.2017. On 13.3.2017 appellants and their counsel were not in court.

On 15.3.2017 Ms Mwilaria Advocate held brief for Mr Mwangela for appellant and directions were taken that appeal be heard by way of written submissions but on 6.6.2017 when matter was mentioned to confirm submissions filed neither the Appellants counsel nor the Respondents Counsel were in court. Another mention was taken on 27.6.2017 but again there was no attendance. When the matter was taken before Justice Chitembwe one month later and there was no attendance. Another date was given 22.8.2017 but no action had been taken by the appellants to file written submissions and the appeal was dismissed after it was confirmed that the appellants counsels was served and notified to file written submissions and failed to do so.

I have looked at the applicant's annexures VW2 but they don't correspond with the court records. There is no time the appellant attempted to move the court to have appeal heard and ever after being notified by the court on its own motion to file submissions it took the court from 22nd September 2016 to 22nd August 2017 to dismiss the appeal after according the appellants all the time to just file written submissions. In fact the last date for mention was notified to the appellants counsel both to their Meru and Nairobi offices. This fact is not denied. Apart from the fact that the advocate who is being blamed for failure to notify instructing advocate about status of matter has not filed an affidavit verifying the allegations, the delay in prosecuting this appeal is inordinate and inexcusable.

I do find that it is not fit for readmission as it has not been proved as under order 42 Rule 21 CPR that appellant was prevented by an sufficient cause from appearing especially on 22.8.2017 when notice was issued and served upon the advocates both in Nairobi and Meru offices.

The appellant if convinced that they have been failed by their advocates have recourse in suing them for professional negligence and for indemnity.

The application to reinstate is dismissed with costs.

HON. A.ONG'INJO

JUDGE

JUDGEMENT DELIVERED, DATED AND SIGNED IN COURT ON 27TH SEPTEMBER 2018.

IN THE PRESENCE OF:

C/A:- Penina

Appellant:- Ms Wambugu holding brief for Mwangela for Appellant

Applicant:- Ms Nyaga for Respondents.

HON. A.ONG'INJO

JUDGE