

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL APPEAL NO. 88 OF 2013

W. E. TILLEY MUTHAIGA LIMITED 1ST APPELLANT/APPLICANT

DOMINIC OMONDI OBUOYO2ND APPELLANT/APPLICANT

VERSUS

**NELSON OWEN ONGAYO (*SUING AS THE PERSONAL REPRESENTATIVE OF THE
ESTATE OF JACOB OMOIMBO OBUOYO DECEASED*)RESPONDENT**

RULING

Before me is an application by the applicant seeking to set aside or review the order of this Court dated 20th March 2017 which dismissed the applicant's appeal for reason that it had not filed its submissions. It is urged that the submissions were indeed filed on 20th March 2017 and that as this Court was dismissing the appeal the submissions were being filed in the registry.

The application is opposed. I have considered the grounds for the application and those in opposition. I have also noted that this is about the third time this appeal has been dismissed. However the submissions for the appellant are now on record and it is in the interest of justice that the appeal be heard on the merits. Accordingly the application is reinstated. The appeal is allowed but with an order that the applicant/appellant shall pay thrown away costs of Kshs.10,000/= (ten thousand shillings) to the respondent. The respondent is given leave to file his submissions within thirty days of this ruling and thereafter the appeal shall be mentioned on 27th June 2017 with a view to giving a date for judgment. It is so ordered.

E. N. MAINA

JUDGE

Ruling delivered in presence of Mr. Ouma Njoga Advocate holding brief for Mrs Obaga for the Respondent.

E. N. MAINA

JUDGE

25/5/2017