



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CIVIL DIVISION
CIVIL APPEAL NO. 62 OF 2012
BETWEEN
WEST KENYA SUGAR COMPANY LTD.....APPELLANT
AND
GABRIEL OKUMU.....RESPONDENT

R U L I N G

1. The application coming up for determination is the Notice of Motion dated 06.03.2017 seeking among other orders, that the order of this court made on 14th November, 2016, dismissing this appeal for want of prosecution [be set aside] and also set aside any consequential orders thereto. The motion contains a raft of other prayers, though during the hearing of the application, counsel appearing only canvassed the prayer for setting aside. The position taken by counsel was, in my view, the right one because the motion was far too loaded with prayers, most of which needed to be canvassed vide separate applications.

2. The application is premised on grounds on the face thereof and is also supported by the affidavit of Elly Kefa Owinyi sworn on 06.03.2017. The affidavit reiterates the grounds in support of the application the main ground being that the applicant was incapacitated in its effort to timeously prosecute the appeal due to lack of copies of proceedings and judgment which took a long time in coming despite the same having been applied for.

3. There was no answer to the application despite counsel for the respondent having been duly served with the requisite hearing notice. The applicant has provided proof that application for copies of proceedings and judgement was made on 04.01.2013 and same received by the Resident Magistrate's court Butali. Although there appears to have been no follow-up to that earlier application, I am satisfied that efforts were made by the applicant to obtain copies of proceedings and judgment.

4. It is also clear now that the applicant is desirous of pursuing its appeal. This is the applicant's constitutional right which this court does not intend to take away. Accordingly, the application dated 06.03.2017 be and is hereby allowed in terms of prayer 3 thereof. I now order as follows;

1. This court's order made on 14.11.2016 dismissing this appeal for want of prosecution be and is hereby set aside
2. The appellant shall, within thirty (30) days from now compile, file and serve the record of appeal.

3. The appellant shall, after due compliance with 2 above and within thirty (30) days of expiry of the period in 2 above set down the appeal for taking of directions.

4. Meantime, Deputy Registrar shall forthwith call for the file in SPMCC Butali Civil Case Number 129 of 2009 for purposes of assisting the applicant comply with 2 and 3 above.

5. In default of 2 and 3 above, and unless otherwise ordered by this court, the appeal shall stand dismissed for want of prosecution.

Orders accordingly,

Ruling delivered, dated and signed in open court at Kakamega this 24th day of May 2017

RUTH N. SITATI

JUDGE

In the presence of;-

.....Miss Otieno (present).....for Applicant/Appellant

.....N/A for Namasti & Co. Advo.....for Respondent

.....Polycap..... Court Assistant