

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 805 OF 2005

JACKSON OCHIENG OMONDI.....DEFENDANT/APPELLANT

VERSUS

CHAO YANG COMPANY LIMITEDRESPONDENT

RULING

The Appellant filed an application dated 27th September, 2017 seeking orders that the term to prosecute the suit as ordered by the Court on 30/6/2017 be extended by 7 months or in the alternative the Court gives the Applicant any hearing date from the Courts diary.

The grounds of the Application are captured on the face of the Application as well as on the Supporting Affidavits of YVETTE LWANDE and STEPHEN MULEI both dated 27th September, 2017. It is deponed that when the matter came up on 30th June, 2017 for notice to show cause why it should not be dismissed, it was ordered that the matter be prosecuted within 90 days failure to which it shall stand dismissed. The Applicant endeavoured to have the matter fixed for hearing but the file could not be traced at the registry. When the Applicant attempted to procure a hearing date the registry declined to issue a hearing date stating that the duration of 90 days given by the Court was too short and there were no available dates. The Appellant pleaded with the Court to extend time as the delay was not intentional.

The Respondent did not file a Reply. I have read and considered the application as well as the Affidavit on record. The appellant submitted orally in Court. This Application is brought under the provisions of Order 50 Rule 6 of the Civil Procedure Rules which provides that,

“Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed:

Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise.”

This is an old matter and it is in the interest of justice that the same be determined promptly. Justice delayed is justice denied. That notwithstanding, I have considered the Applicants argument that the file has been missing and he was not able to take a hearing date due to the short period. It will be in the interest of justice that he be given an opportunity to prosecute his Appeal. The orders of this Court therefore are that the Application is allowed and the Appeal be prosecuted with the next six months from the date of this ruling.

It is so ordered.

Dated, Signed and Delivered at Nairobi this 20th day of **December, 2017**

.....

L. NJUGUNA

JUDGE

In the presence of:-

.....**DEFENDANT/APPELLANT**

..... **RESPONDENT**