



REPUBLIC OF KENYA

HC CIVIL APPEAL CASES NO. 111 OF 2011

GRACE NJERI GEORGE.....PLAINTIFF/APPLICANT

BANK GLOBAL MANAGEMENT LTD.....DEFENDANT/RESPONDENT

RULING

The plaintiff/applicant has filed a Notice of Motion dated 20th November 2013. It is brought under Order 9 Rule 9, Order 35 Rule 2, Order 51 Rule 1 and section 3 and 3a of the Civil Procedure Rules 2010 and Civil Procedure Act Chapter 21 Laws of Kenya and all other enabling provisions of the law, seeking the following orders;

1. Spent.
2. That the Honourable Court be pleased to grant leave to firm of M/s Anambo & Co. Advocates to come on record in place of the firm of Waiganjo Wachira Advocates for the plaintiff/applicant.
3. That the Honourable Court be pleased to dismiss the defendant/applicant's appeal dated 9th March 2011 for want of prosecution and order release of Kshs.290,000/- deposited at 1 & M Bank, 2nd Ngong Avenue Branch A/C No. 0020057011550151 to the applicant.
4. That costs of the application be provided.

The motion is based on the grounds on the face of the application and the supporting affidavit of Grace Njeri George sworn on 12th November 2013. The Application was opposed and there is a replying affidavit dated 21st January, 2014 sworn by Samuel Ngari Thuku and Mr. Patrick Lutta.

The application is based on the following grounds.

1. The plaintiff applicant engaged the firm of Waiganjo Wachira Advocates who filed this case on her behalf.
2. The case was heard and a summary judgement was entered in favour of the applicant on 9th February 2011 for the sum of Kshs.290,000/-
3. The applicant's and defendant's counsel set aside the summary judgment by consent on 25th February 2011 and agreed to deposit the decretal amount of Kshs. 290,000/- in A/C no. 0020057011550151 at I & M Bank, 2nd Ngong Avenue, Branch, Nairobi.
4. The applicant's advocate did not seek her consent regarding the consent and deposit mentioned in paragraph 3.
5. The defendant's advocates filed an appeal against the judgment on 9th March 2011.
6. The applicant counsel filed an application dated 13.1.2012 to strike out the appeal since it was filed out of time but this application was dismissed as he was not present in court to prosecute it.
7. The matter has since then been coming for mention for direction indefinitely and the defendant seems to have lost interest in the appeal and they request the court to dismiss it for want of

prosecution.

I have considered the affidavits filed by the parties, annexures and oral submissions made in Court. Mr. Lutta in his affidavit has explained the reasons for the delay in executing the appeal. The appeal was filed within the statutory period of 30 days. They have sought to have the matter listed for directions before a judge through their letter date 10th February 2012 and 24th of January 2014. The applicant has failed to sufficiently show why the appeal should be dismissed. I also note that there has been a shortage of judges to hear civil appeals. This is a matter that should be heard on merit. I therefore decline to grant prayer 3 of the application dated 20th November 2013. I agree with Mr. Anambo's submissions that leave to come on record cannot be declined merely because a client has not paid fees. M/s Waiganjo Wachira Advocates the former counsel for the applicant can sue to recover his fees. I grant leave to the firm of M/s Anambo & Company Advocates to come on record for the plaintiff/applicant. Costs shall be in the cause.

Orders accordingly.

Dated, signed and delivered this **28th** day of **March** 2014.

R. E OUGO

JUDGE

In the presence of:

..... **PLAINTIFF/APPLICANT**

.....**DEFENDANT/RESPONDENT**

.....**COURT CLERK**