



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CIVIL APPEAL NO. 23 OF 2008

ROSELINE ADHIAMBO APPELLANT

-VERSUS-

JOSEPH KIAGE MAHUBE RESPONDENT

RULING

1. Before directions for ruling on an application by the Respondent for dismissal of the appeal for want of prosecution could be given, the counsel for the Appellant sought to introduce into the record their 3 letters to the Deputy Registrar dated 3/2/2010, 13/7/2010 and 23/3/2009, respectively forwarding certified copy of the decree of the lower court; seeking admission of the appeal; and requesting for certified copies of proceedings for purposes of appeal. Counsel explained that these letters were in the original file which was misplaced resulting in the construction of the skeleton file herein and that they had been duly stamped by the court as received.
2. Counsel for the Respondent objected to the inclusion of the letters, which he considered an afterthought since the Appellant had chosen to file grounds of opposition to the application for dismissal of the appeal without an affidavit in reply to which she could have attached the said letters. Counsel submitted that “it is an abuse of the court process to introduce documents at this stage; whether the letters existed or not, it is an ambush to the Respondent who will not have a chance to respond to the letters”.
3. I have considered the Appellants’ application for leave to introduce the letters in question and taken into account the following:-
 - a. If the letters had been received by the court, they would have been available to the court had the hearing of this application for dismissal of the appeal proceeded on the original file.
 - b. The Appellant is not to blame for the loss of the original file, which the parties have reconstructed and for whose completeness of record the Appellant seeks to put in letters duly received by the court under the original file.
 - c. The Appellant is not guilty of inordinate delay in seeking to include the letters as the application for reconstruction of the file dated 25/1/2013 was granted on 21/3/2013 and the request for the inclusion of the letters made on 30/4/13 on the first day scheduled for directions of the ruling on the application for dismissal for want of prosecution.
 - d. The Appellant may not have attached the letters to their replying affidavit, even if one had been filed to the application to dismiss the appeal, because they would have rightly expected the original file with all its contents to be availed.
 - e. The Respondent would be entitled to comment on the letters allegedly filed into court by the Appellant.

- f. So far as possible, a skeleton file must contain all the pleadings, affidavits, exhibits, correspondence and other documents that the original file contained, which the parties and their advocates are able to supply.
4. Accordingly, I make the following orders on the oral application by counsel for Appellant to lodge letters dated 3/2/2010, 13/7/2010 and 23/3/2009:-
- a. The Appellant will file and serve on the Respondent an affidavit attaching the duly stamped copies of letters dated 3/2/2010, 13/7/2010 and 23/3/2009 within 3 days from the date of this ruling.
 - b. The Respondent will file a replying affidavit, if necessary, within 7 days of service.
 - c. The parties may then make oral submissions on the said letters to supplement the written submissions already filed.
 - d. Mention for further directions on 13/6/2013.

Dated and delivered this 31st day of MAY 2013.

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EDWARD M. MURIITHI

JUDGE

In the presence of: -

Mr. Nyambati for Mr. Okong'o for the Appellant

N/A for the Respondent

Mr. Edwin Mongare - Court Clerk

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EDWARD M. MURIITHI

JUDGE