



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
(MILIMANI LAW COURTS)
CIVIL APPEAL 431 OF 2005

SOFITRA LIMITED.....APPELLANT

VERSUS

JULIA OPONDO OKERE.....1ST RESPONDENT/APPLICANT

AKAMBA BUS SERVICES LIMITED.....2ND RESPONDENT

R U L I N G

1. By a notice of motion dated 1st April, 2009, Julia Opondo Okere, who is the 1st respondent, (hereinafter referred to as the applicant) in this appeal, moved this court for orders *inter alia*, that the appeal be and is dismissed for want of prosecution, in the alternative that the appeal be and is struck out or dismissed for being an abuse of court process. The applicant also sought an order that the conditional stay of execution issued on 24th August, 2005 in Nairobi CMCC No.9982 of 2002 be vacated.
2. At the hearing of this application, the applicant abandoned the prayer for dismissal of the appeal, and proceeded with the alternative prayer for striking out. The applicant has filed a supporting affidavit in which she maintains that the appellant has failed to prosecute its appeal, despite an order made on 10th March, 2009, directing the appellant to file its record of appeal within 21 days. Instead a record of appeal has been filed outside that time without any leave of the court.
3. The applicant maintains that she is suffering injustice as a result of the appellant's inactivity as there is an order for stay of execution in force, thereby denying her the benefit of the judgment given in her favour by the lower court.
4. Sofitra Limited who is the appellant herein, objects to this application. Grounds of objection have been filed contending that the application has been overtaken by events, as there is on record a duly signed and served record of appeal. It is further maintained that the application is misconceived as the provisions of Order XLI Rule 8B of the Civil Procedure Rules have not been complied with. The court was therefore urged to dismiss the application.
5. From the court record it is apparent that the appellant was given 21 days to file its record of appeal from 10th March, 2009. The record of appeal was filed in court on 15th April, 2009. It is evident that that

record was filed out of time and was only filed after the respondent had filed its motion. The appellant cannot ignore the court order which clearly says that the appeal was to be filed within 21 days from 10th March, 2009. The appellant has not even attempted to have time extended to enable it file the record of appeal or have the record filed on 15th April, 2009, deemed as properly filed.

6. From the luckluster way in which the appellant is behaving, it is evident that the appellant is not interested in prosecuting the appeal. I therefore allow the applicant's motion, strike out the record of appeal filed on 15th April, 2009 and further strike out the appeal as being an abuse of the process of the court as the appellant is clearly not interested in prosecuting it.

Those shall be the orders of the court.

Dated and delivered this 19th day of May, 2009

H. M. OKWENGU

JUDGE

In the presence of: -

Miss Onyango H/B for the appellant

Obwayo for the 1st respondent/Applicant

Miss Onyango for the 2nd respondent