

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MERU

Civil Appeal 82 of 2006

KENYA WILDLIFE SERVICES APPELLANT

VERSUS

ABDULLAHI ADAN RESPONDENT

RULING

The appellant filed an appeal in this matter against the lower court's judgment of 28th July 2006. The respondent by an application dated 24th April 2008 sought the dismissal of the appeal for want of prosecution. That application was heard by the Hon. Mr. Justice Emukule on 16th March 2009. On that date the honourable judge granted orders for dismissal of the appeal and vacated the stay orders granted to the appellant. The appellant filed an application dated 13.5.2009 seeking review of the orders granted by Hon. Mr. Justice Emukule. When that application came before me for hearing, both counsels for the appellant and the respondent failed to bring it to my attention that the orders for review were issued by Hon. Mr. Justice Emukule. Had counsel's brought that to my notice, I would have been mindful of Order XLIV Rule 4(1) which provides:-

“If the judge who passed the decree or made the order is no longer attached to the court, the application may be heard by any other judge who is attached to the court at the time the application comes up for hearing.”

In this case, Hon. Mr. Justice Emukule is still attached to this court. He is accordingly the right person to entertain the appellant's application dated 13th May 2009. I therefore without much a do hereby expunge from the record the proceedings of 19th May 2009, when the said application was argued before me. This matter shall be referred to the Hon. Mr. Justice Emukule for purpose of giving directions on the hearing of that application. The interest of justice however demand that a stay of execution in CMCC No. 787 of 2003 and stay of execution for costs in this matter be granted until further orders of the court.

Orders accordingly.

MARY KASANGO

JUDGE

Dated and delivered at Meru this 12th ...day of June.... 2009.

M.J.A. EMUKULE

JUDGE