



Oluoch v Board of Registration of Architects & Quantity Surveyors (Civil Appeal 23 of 2019) [2023] KEHC 3905 (KLR) (Civ) (3 May 2023) (Ruling)

Neutral citation: [2023] KEHC 3905 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL 23 OF 2019

JN MULWA, J

MAY 3, 2023

BETWEEN

GODFREY OKOTH OLUOCH APPELLANT

AND

**BOARD OF REGISTRATION OF ARCHITECTS & QUANTITY
SURVEYORS RESPONDENT**

(Ruling delivered on 7th May 2020, the court (Njuguna J.))

RULING

1. Before the court is the Respondent's Notice of Motion Application dated 17th January 2022 brought pursuant to Sections 1A, 1B and 3A of the *Civil Procedure Act* Cap 21 of the Laws of Kenya and Article 159 of *the Constitution* of Kenya, 2010. It seeks the following orders: -
 1. Spent.
 2. That this Honorable Court be pleased to strike out the Appeal herein for the reason that 90 days have lapsed from the date the orders were issued on 7th May 2020.
 3. That this Honorable Court be pleased to direct that the suspension given by the Respondent/Applicant against the Appellant on 10th December 2018 for a period of three years should start to run from the date the Appeal herein is struck out.
 4. That the costs of this Application be provided for.



2. The Application is based on the grounds set out on its face and supported by an Affidavit sworn by Martin Munene State Counsel as well as a Further Affidavit sworn on 6th June 2022 by George Charles Omondi, the Registrar of the Respondent herein. The gist of the Respondent's application is that on 7th May 2020, this court ordered the Appellant to prosecute its appeal within 90 days from that date but the Appellant failed to comply. In its view, the Appellant has lost interest in the appeal but is still riding on an order of stay of execution granted by this court on 7th May 2020.
3. The Appellant opposed the application through a Replying Affidavit and Further Affidavit sworn on 26th April 2022 and 17th June 2022 respectively. The Appellant blames the delay in prosecuting his appeal within the 90 days ordered by the court on 7th May 2020 on the following: the ambiguity in the directions issued by the Court on 7th May 2020 regarding normal resumption of Court operations; his involvement in commercial disputes before the High Court commercial division namely Misc. Application Cause No. E247 of 2020 and before an Arbitration tribunal with the Complainant whose subject matters relate to the subject of his Appeal herein; and, time as well as financial constraints that made it difficult for him to attend to several courses of action in different forums simultaneously.
4. Further, the Appellant has blamed the Respondent for failing to comply with the court's orders of stay of execution. He avers that despite the above orders, the Respondent refused to retract his suspension and restore his name in the Respondent's Register of Architects pending the hearing and determination of his Application for Stay and the Appeal. For this reason, the Appellant contends that he has essentially served his three years suspension as per the Respondent's decision of 10th December 2018 hence, in the event that the Court is persuaded to dismiss his Appeal, it should not grant prayer 3 of the application as this would amount to extending his suspension for a further three years.
5. The Application was canvassed by way of written submissions which the court has carefully considered alongside the Affidavits in support of and against the application. In the court's view, the issues that fall for determination are:
 - a. Whether the Appeal herein should be struck out for want of compliance with the orders of the Court issued on 7th May 2020;
 - b. Whether Appellant's three years suspension should take effect from the date the Appeal herein is struck out; and,
 - c. What order commends itself on costs.

Whether the Appeal herein should be struck out for want of compliance with the orders of the Court issued on 7th May 2020;

6. The Appellant instituted his appeal by way of a Memorandum of Appeal filed on 23rd January 2019. The appeal arose from the decision of the Respondent made on 10th December 2018 suspending the Appellant from the Register of Architects for gross negligence and professional misconduct for a period of three years from date of the decision. Simultaneously with the Appeal, the Appellant filed an application seeking inter alia stay of execution of the Respondent's decision.
7. Vide a Ruling delivered on 7th May 2020, the court (Njuguna J.) allowed the application and ordered the Respondent to supply the Appellant with the proceedings, documents and all the evidence that formed part of the proceedings before the Board to enable him compile his Record of Appeal. In addition, the court granted the Appellant a stay of execution for 90 days and ordered that the appeal be prosecuted within the said period failing which, the stay order would automatically lapse. The 90 days were ordered to start running from when the normal business of the court resumes.



8. It is not disputed that in compliance with the Ruling of the Court, the Respondent, vide a letter dated 16th June 2020, supplied the Appellant with all the materials needed for the preparation of the Record of Appeal by the Applicant. However, the appeal was not prosecuted within the 90 days as ordered by Lady Justice Njuguna and the Appellant has never filed the Record of Appeal to date.
9. What effect did noncompliance with the court's orders of 7th May 2020 have on the appeal? The Respondent contends that the Appellant's non-compliance automatically invalidated the appeal hence it should be struck out. The court however holds a contrary view. From the orders which have been highlighted hereinabove, it is clear that non-compliance only resulted in the automatic lapse of the order for stay of execution of the Respondent's decision. That is to say, if the Appeal was not prosecuted within the 90 days, there would no longer be any stay of execution in place and the Appellant would have to serve his suspension while pursuing his appeal at the same time. It is therefore not true that the Appellant has unfairly ben riding on the orders of stay.
10. What is evident however is that there was a prolonged delay of over twenty (20) months in the filing of the Record of Appeal and prosecution of the appeal as at the time the Respondent filed the instant application. Had the Respondent sought an order for dismissal of the appeal for want of prosecution under Order 42 Rule 35 of the Civil Procedure Rules rather than for non-compliance with the orders of 7th May 2020, the court would not have hesitated to grant the order. From the foregoing, it follows that prayer 1 of the application is not merited.

Whether Appellant's three years suspension should take effect from the date the Appeal herein is struck out;

11. As already discussed hereinabove, the order for stay of execution of the Respondent's decision to suspend the Appellant from the Register of Architects automatically lapsed at the end of the 90 days period. In the court's view, the 90 days commenced on the date of the Ruling of 7th May 2020 as by then, courts had already embraced a new normal of virtual hearings and e-filing of matters despite the pandemic pursuant to directives issued by the then Hon. Chief Justice. This means that the stay lapsed on 5th August 2020 and by the following day (6th August 2020), the Appellant automatically resumed serving his suspension as ordered by the Respondent on 10th December 2018.
12. In the premises, prayer 2 of the Respondent's application is also unmerited.

Conclusion

13. For the foregoing, the court finds that the Respondent's Notice of Motion Application dated 17th January 2022 lacks merit and is hereby dismissed. There shall be no order as to costs.

Orders accordingly.

DATED, DELIVERED AND SIGNED IN NAIROBI THIS 3RD DAY OF MAY, 2023.

J. N. MULWA

JUDGE

