



Kibett v Peejay & Sons Company Limited & another (Civil Appeal 143 of 2017) [2023] KEHC 23581 (KLR) (Civ) (9 October 2023) (Ruling)

Neutral citation: [2023] KEHC 23581 (KLR)

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

CIVIL

CIVIL APPEAL 143 OF 2017

DO CHEPKWONY, J

OCTOBER 9, 2023

BETWEEN

NANCY JEPTOO KIBETT APPELLANT

AND

PEEJAY & SONS COMPANY LIMITED 1ST RESPONDENT

PAUL MWANGI NDERITU 2ND RESPONDENT

RULING

1. This is a ruling in respect of Notice to Show Cause dated 16th August, 2022 which was issued by the court. The same was not served upon the Appellant as indicated in the Affidavit of Service on record sworn on 1st September, 2022 by Miriam Ndiritu for the reason that the Appellant’s Counsel had moved from his office. However, on 11th July, 2023, the Appellant’s Counsel was contacted by the court officials with regard to the said Notice to Show Cause.
2. Upon receipt of the call, counsel for the Appellant, Mr. Daniel Achach filed a Show Cause Affidavit sworn on 24th July, 2023 wherein he stated that he filed the prepared the Memorandum of Appeal and instructed his Court Clerk, one Fredrick Obach to file the same at Kiambu Law courts. That, on the evening of 21st September, 2017, upon filing the appeal, his said Clerk was accosted by thieves while leaving Kiambu Law Courts whereupon his bag which contained the pleadings and the Appeal documents were stolen and as such he did not have the appeal number and was unable to get the same from the Court Registry despite several follow ups.
3. He holds that the delay caused a strain in the advocate-client relationship who blamed them for deliberately failing to file an appeal on her behalf and she did not give further instructions on the same. The Appellant’s counsel had gone on to explain that his said clerk succumbed to Covid-19 in



2021hence they are unable to have a sworn affidavit on the sentiments or the OB number for the report on the theft incident.

4. He holds that on 11th July, 2023 when he was called from the court registry, he managed to get a copy of the filed Memorandum of Appeal and states that his client has instructed him to resuscitate the appeal so that the same can be heard on merit and asserts that he is now ready to proceed with the Appeal.

Analysis and Determination

5. The issue for determination before this Court is whether or not the appeal should be dismissed for want of prosecution. The Notice to Show Cause was issued on 16th August, 2022, after it was noted that the appeal which was filed on 21st September, 2017 vide a Memorandum of Appeal dated on even date had been found to have remained dormant since its admission for hearing on 5th May, 2022. There was no response and the court re-issued another Notice to Show Cause on 27th June, 2023.
6. The court notes in his Show Cause Affidavit dated 29th July, 2023 the Appellant's Counsel has attached letters dated 26th September, 2017, 13th November, 2017, 05th March, 2018, 14th June, 2018, 03rd January, 2019, 22nd August, 2019 and 13th August, 2020, all addressed to the Deputy Registrar-Kiambu but the same having no evidence to confirm they were sent and received by the court.
7. Be that as it may, assuming the letters were indeed sent to the court, there is no explanation as to why the Appellant has not taken any step to prosecute the Appeal or even request for the case number as indicated by the Appellants since 2017. It is also noted that although the appeal was admitted for hearing and directions issued, the Appellant had never filed a Record of Appeal. Equity does not aid the indolent, which indolence has been demonstrated in this case by the Appellant.
8. The court therefore finds that the reasons advanced by the Appellant as to why the appeal has not been prosecuted for all these years are not satisfactory. Clearly, the Appellant was not desirous of prosecuting the Appeal a result of which the Respondents, if at all has been denied enjoyment of the fruits of their Judgment. And also, it is paramount that litigation must come to an end.
9. In the upshot, the Appeal is hereby dismissed for want of prosecution.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 9TH DAY OF OCTOBER, 2023.

D.O CHEPKWONY

JUDGE

In the presence of:

M/S Kariuki holding brief for M/S Achach for Appellant/Applicant

Court Assistant – Martin

