

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 576 OF 2017

ONGATA ABEDINEGO.....1ST APPELLANT/RESPONDENT

DICKSON MUNGAFU.....2ND APPELLANT/RESPONDENT

VERSUS

JOSEPH MUTISO KINGOLI.....RESPONDENT/APPLICANT

RULING

This is an application by way of Notice of Motion seeking an order that the appeal be struck out under Order 42 Rule (1), 2,11,12,13 (1) (3) and rule 35 (1) of the Civil Procedure Rules and Sections 1A, 3A and 79 A of the Civil Procedure Act. The applicant in the reasons upon which the application has been made states that despite the filing of the Memorandum of Appeal the appellants have not taken any steps to file the record of appeal or set it down for directions contrary to Section 79 B of the Civil Procedure Act.

There is a supporting affidavit sworn by the advocate for the applicant in support of the application. The application is opposed and there is a replying affidavit sworn by the Claims Manager at Directline Assurance Company Limited who are the insurers of motor vehicle registration No. KBY 551W at the centre of the dispute.

Both parties have filed submissions which I have on record. It is true that the memorandum of appeal was filed on 24th October, 2017. It is common knowledge that the record of appeal may not be filed without the lower court proceedings. There is evidence that the appellants' counsel applied for proceedings which have not been received to date. Upon the filing of the memorandum of appeal, the Deputy Registrar wrote to the lower court for the transmission of the original record and certified copies of the judgment, proceedings and decree. There are three reminders on record addressed to the lower court but to date there has not been any compliance.

It is clear therefore that, default cannot be attributed to appellants. This court has observed in some previous proceedings of similar nature that, no litigant shall be blamed for the systemic shortcomings of the court process. This is a perennial problem that should be addressed to ensure expeditious disposal of appeals that follow the lower court judgments.

Accordingly, this application shall not succeed as the court is not able to blame the appellants. The same is accordingly dismissed with no order as to costs. The Deputy Registrar of this court shall facilitate the availability of the lower court proceedings within 30 days from today so that the appellants can file their record of appeal.

Dated, signed and delivered at Nairobi this 4th day of March, 2021.

A. MBOGHOLI MSAGHA

JUDGE