



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL APPEAL NO. 585 OF 2019

PAN AFRICA INSURANCE LIMITED.....APPELLANT

VERSUS

JACOB TAMRE WAMBAYE (Suing as the Administrator of the Estate of

WYCLIFF CAVINE OMONDI).....1st RESPONDENT/APPLICANT

APA INSURANCE COMPANY LIMITED2ND RESPONDENT

RULING

1. The application dated 24th March, 2021 seeks orders that:

“(a) That the Appeal filed herein be dismissed with costs and all orders of stay granted herein be vacated.

(b) That the court orders that the amount deposited in account No.xxxx in the name of Simba & Simba and Nyaberi & Co. Advocates at Kenya Commercial Bank, Kipanda House Branch, Nairobi the same being the decretal amount deposited as security be released to the firm of Nyaberi and Co Advocates for the settlement of the judgment in CMCC No.7673 of 2014.

(c) That costs of this application be in the cause.”

2. The application is premised on the grounds stated therein and is supported by the affidavit filed by the Applicant’s counsel. It is stated that since the filing of the Appeal herein, no steps have been taken to prosecute the same despite the service of a notice to file the Record of Appeal. It is contended that the delay herein is prejudicial to the Applicant who has been denied the fruits of the judgment.

3. The application is opposed as per the grounds of opposition dated 14th June, 2021 which state as follows:

1. The application is incompetent, misconceived and devoid of any merit in view of its own contents together with the supporting affidavit.

2. The orders sought under the application are untenable and the orders sought thereunder are based on a grave misconception of law and fact.

3. The orders sought herein are unsustainable and are therefore unavailable to the applicant.

4. The application is tantamount to trifling with the court and is an abuse of the process of this honourable court as the same orders are those being sought in the Plaintiff.

4. In the replying affidavit filed in opposition to the application, it is deposed that the Appellant has been following up on the typed proceedings and that the outbreak of the COVID 19 Pandemic has not made things any easier. It is further asserted that no directions have been given herein by the court and that in any event, the Applicant was also at liberty to set down the Appeal for hearing.

5. The Application was canvassed by way of written submissions which I have considered.

6. The Memorandum of Appeal herein was filed on 15th October, 2019. It is noted that after the determination of the application for stay of

execution, no step has been taken herein by the Appellant to prosecute it's Appeal. It seems the Appellant was only woken up by the instant application.

7. There's been inordinate delay in the prosecution of the Appeal. The Appellant cannot simply sit back as he is the prime mover of it's Appeal and the one who stands to be prejudiced if the Appeal is dismissed.

8. All in all, since the lower court record has now been availed, this court is inclined to give the Appeal a chance to be heard on merits. The Appellant to compile, file and serve the Record of Appeal within 60 days from the date hereof. In default the application herein to stand as allowed. Costs of this application to the Applicant.

DATE, SIGNED AND DELIVERED AT NAIROBI THIS 7TH DAY OF OCTOBER, 2021

B. THURANIRA JADEN

JUDGE