



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL CASE NO. 592 OF 2016

CENTAURUS COMPANY LIMITED.....APPLICANT

VERSUS

ALOONA INDUSTRIES KENYA LIMITED.....RESPONDENT

RULING

1. The application dated 19th November, 2018 seeks orders that:

“1.That the appeal filed on 16th September, 2016 be dismissed for want of prosecution.

2.That the decretal amount of Ksh.419,003.61 together with any accrued interest deposited in a joint interest earning account number 1004823431 at NIC Bank be released to the Respondent/Applicant’s advocates.

3. That the costs of this application be borne by the Appellant.”

2. The application is predicated on the grounds stated on the face of the application and the affidavit in support. Judgment was entered by the lower court on 16th August, 2016. The Respondent (Appellant) was dissatisfied with the said judgment and filed the appeal herein. The Respondent (Appellant) filed an application for stay of execution which was allowed on condition that the decretal sum was deposited in a joint account of the advocates for the parties. The Applicant’s complaint is that since the filing of the Memorandum of Appeal on 16th September, 2016, no Record of Appeal has been filed. The Applicant accuses the Respondent of bad faith and indolence for failure to prosecute the appeal

3. The application is opposed on the following grounds:

“1.That the application herein is baseless, unmeritorious and a total waste of court’s time and should be dismissed with costs to the Respondent as the orders are been prematurely sought as the proceedings in the lower court are yet to be typed.

2. That despite all reasonable efforts on the part of the Respondent the lower court is yet to complete typing of proceedings. The delay is therefore not attributed to the Respondent but to the lower court.

3. That grant of orders sought will be very prejudicial to the Respondent as the court will have closed the door on an innocent litigant who is ready and willing to ventilate its case before the High court.

4. That the Respondent is however ready to prosecute its appeal as soon as the proceedings are ready.

5. That the application is otherwise an abuse of the court’s process and should be dismissed with costs.

4. It is averred in the affidavit by counsel for the Respondent that the lower court is yet to supply them with the typed copies of the lower court file. That the Respondent eventually applied for the handwritten proceedings and typed the same and forwarded them to the lower court but the registry misplaced the same. That the Respondent’s side forwarded fresh copies of the typed proceedings to the lower court on 17th February, 2019 but they are yet to be supplied with the certified copies of the typed proceedings.

5. The application was argued by way of written submissions which I have considered alongside the lists of authorities filed.

6. It is evident from the several letters exhibited herein by the Respondent (annexture No.VW1-VW4) that since September, 2016, the Respondent has been requesting for the typed proceedings and subsequently for the certified copies of the typed proceedings but the same have not yet been availed. In the circumstances, this court holds that the delay has been explained to the satisfaction of the court. The Respondent cannot be blamed for the delay.

7. In the upshot, this court is persuaded to allow the appeal to be heard on merits on priority basis. Consequently, the application is dismissed with costs in cause.

Date, signed and delivered at Nairobi this 6th day of Feb., 2020

B. THURANIRA JADEN

JUDGE