



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**HIGH COURT CIVIL APPEAL NO. 334 OF 2018**

**GURU NANAK RAMGARHIA**

**SIKH HOSPITAL.....1<sup>ST</sup> APPELLANT/RESPONDENT**

**THE ADMINISTRATION GURU**

**NANAK RAMGARHIA SIKH HOSPITAL.....2<sup>ND</sup> APPELLANT/RESPONDENT**

**VERSUS**

**WYCLIFF AMWAYI .....1<sup>ST</sup> RESPONDENT/APPLICANT**

**KULWINDER S. SIHRA.....2<sup>ND</sup> RESPONDENT**

**KAMALJEET S. SIHRA.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. The application dated 7<sup>th</sup> February, 2014 seeks orders that:

**1. That the Appeal be dismissed for want of prosecution.**

**2. That the conditional orders of stay issued by the HIV Tribunal vide ruling delivered on 6<sup>th</sup> July, 2018 be set aside.**

2. That in the alternative:

**1. That the Appeal be prepared and set down for hearing and determination forthwith.**

**2. That the costs of this application be borne by the Appellants in any case.**

3. It is stated in the grounds and the affidavit in support of the application that the Appellants have failed to take steps to prosecute the Appeal herein. It is deposed that the delay is inexcusable yet the Appellants continue to enjoy the orders of stay of execution.

4. The application is opposed. The Appellants filed a replying affidavit and two supplementary affidavits. The delay in prosecuting the Appeal is blamed on the delay by the Tribunal in supplying the typed and certified copies of the proceedings and the decree. It was further averred in the supplementary affidavits that further delay was caused by the expiry of the term of the Tribunal members. That new members of the Tribunal were appointed on 24<sup>th</sup> May, 2019 and the Appellants were then issued with the decree and a certificate of delay and the Record of Appeal prepared.

5. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents did not participate in the application.

6. I have considered the application, the response to the same and the submissions by the respective counsel for the parties.

7. The exhibited copies of the proceedings from the Tribunal reflect that the same were certified as true copies of the original on 13<sup>th</sup> November, 2018. A letter dated 13<sup>th</sup> February, 2019 from the Tribunal addressed to the Respondents Advocates shows that the decree could

not be availed as the Tribunal's members term had expired in December, 2018. The delay was thus caused by circumstances beyond the control of the Appellants.

8. The Record of Appeal has now been compiled and filed. Consequently, I direct that the record of the Tribunal be availed and file be placed before a judge in chambers for directions under Section 79B Civil Procedure Act. Costs in cause.

Dated, signed and delivered at Nairobi this 13<sup>th</sup> day of Feb., 2020

**B. THURANIRA JADEN**

**JUDGE**