



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT CHUKA

HCCA NO.11 OF 2019

ROSEMARY KAARI MURITHI.....APPELLANT

VERSUS

BENSON NJERU MUTHITU.....RESPONDENT

RULING

1. Before me is a Notice of Motion dated 20th February 2020 brought by **ROSEMARY KAARI MURITHI**, the Appellant/Applicant and seeks the following orders.

i) Spent

ii) That this honourable court be pleased to arrest and/or suspend the writing and delivery of its judgment on the appeal filed on 12th March 2020 pending determination of this application.

iii) That the Appellant be allowed to file Supplementary record.

iv) That the order do apply in HCCA NO. 8, 9 and 10 of 2019.

v) That costs be provided.

2. The grounds upon which this application is made are listed on the face of the application as follows:-

i) That on 13th February 2020 the Appellant sought leave to file Supplementary record of appeal within 7 days and that a judgment date was fixed for 12th March 2020 subject to the supplementary record being filed within 7 days.

ii) That the Appellant's counsel went to court's registry on 18th February 2020 to file Supplementary record but was turned away at the registry.

iii) That if the Supplementary record is not filed the applicant will suffer prejudice and that if the application is allowed no party would be prejudiced.

3. The Applicant has supported the above grounds with an affidavit by her counsel sworn on 20th February 2020 where he has reiterated the above grounds.

4. The Respondent has opposed this application through an affidavit by counsel sworn on 24th February 2020. The Respondent has pointed out that the Applicant had sought for time to file Supplementary record which was granted and given 7 days and that on 13th February 2020, Kaumbi Advocate holding brief for Maeli asked for adjournment in order to file Supplementary record but the application was flatly declined. He further points out that the Applicant is dishonest to claim he was granted more time on 13th February 2020.

5. The Respondent further terms the application to arrest judgment to be bad faith and that the same is not anchored in law. He has further pointed out that on 6th February 2020 the Applicant was granted chance to put her house in order but squandered her chance and has been giving different excuses.

6. This court has considered this application and the response made. The record of proceedings shows that as far back as 16th July 2019, the Appellant told this court that he was in the process of filing supplementary record of appeal. This court then directed that the appeal be disposed by way of written submissions and gave strict timelines to both parties. On 6th February 2020, the Appellant counsel asked this court for more time to file a supplementary record of appeal which it had on 6th July 2019 stated it was in the "*process of being filed*". This court expressed its reservations and directed the Appellant to show some seriousness. It nonetheless granted the Appellant her wish to file supplementary record within 7 days. It then fixed the matter for mention on 13th February 2020. On 13th February 2020 the Appellant came and told this court it had not complied with the orders of this court and blamed his client for not complying with the orders of this court. This court rejected the request for further adjournment and fixed the matters for judgment.

7. The Applicant has now come up with another lame excuse that she was granted leave on 13th February 2020 which is not factual. The grounds listed on the face of the application are obviously not made in good faith as they are completely misleading. The Applicant has invoked the provisions of **Section 1A** and **1B** of the **Civil Procedure Act** which I find ironical because the provisions cited seeks to promote just and expeditious resolution of disputes filed in court. This application coming rather belatedly after the court had retired to go and write a judgment goes contrary to the invoked provisions cited by the applicants. I am therefore not persuaded that the applicant have shown any merit in this application. The same is disallowed with costs to the Respondent.

Dated, signed and delivered at Chuka this 3rd day of March 2020.

R.K. LIMO

JUDGE

3/3/2020

Ruling dated, signed and delivered in the open court in presence of Maeli for Appellant/Applicant and in absence of Respondent.

R.K. LIMO

JUDGE

3/3/2020