



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT CHUKA

HCCA NO. 19 OF 2018

NTWIGA JOSPHAT.....1ST APPELLANT

KIRIMI JOSPHAT.....2ND APPELLANT

JANE JOSPHAT.....3RD APPELLANT

ROSE RIUNGU JOSPHAT.....4TH APPELLANT

KATHAMBI KIRUJA.....5TH APPELLANT

VERSUS

ESTHER GITONGA KIRUJA.....RESPONDENT

RULING

1. Before me is an application by way of Notice of Motion dated 19th February 2020 brought by Ntwiga Josphat, Kirimi Josphat, Rose Riungu Josphat and Kathambi Kiruja the Applicants herein who have moved this court for the following orders/relief;

(i) That the dismissal order of the appeal made on 5th February 2020 be set aside and Appellants be given limited time to file a record of appeal.

2. The grounds upon which this application has been brought are listed as follows:

a) That this appeal was dismissed on 5th February 2020 for want of prosecution.

b) That the Notice to Show Cause was never served upon the parties or their counsel.

c) That the Appellants have been disinherited through the ruling appealed from wants to be heard.

3. This application is supported by an affidavit sworn by Elijah Ogoti, counsel representing the applicants. In the Supporting Affidavit, the counsel states that there is affidavit of service to show that his office was served with Notice To Show Cause for 5th February 2020.

4. This court has considered this application and though I note that the Appellants have been indolent in prosecuting this appeal as no action has been taken since 30th April 2019 when the appeal was admitted, I note that it is unclear from the court record how the date of 5th February 2020 was fixed for Notice to Show Cause and whether the Appellants were notified. This court has also noted that this appeal has now been dismissed twice for want of prosecution. I am however inclined to exercise my discretion and grant them a last chance to file the record of appeal and set down the appeal for directions. The Appellants are given 7 days from the date of this ruling to file the record as the proceedings were typed and supplied on 14th February 2019. There is no excuse why the Appellants should not have this appeal heard and determined.

I will therefore allow this application but I will not make any order as to costs.

Dated, signed and delivered via skype this 4th day of May 2020.

R.K. LIMO

JUDGE

4/5/2020

Ruling signed, dated and delivered in court in presence of Ogoti for the Applicant and in absence of Respondent in person.

R.K. LIMO

JUDGE

4/5/2020