

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL APPEAL NO. 294 OF 2012

PETER MBAU GAITHO.....APPELLANT

VERSUS

ANNA MUNYIVA MUTUA

JOSEPH MUTUKU MBITHI.....RESPONDENTS

(Suing for and on behalf of the dependents and the estate of

JOSEPH MAINA KANYI Deceased)

RULING

1. The application dated 13th December, 2019 seeks orders that execution of the ruling delivered at High Court Nairobi in HCCA 294 of 2012 in November, 2009 by Honourable Jaden Thurairara and all consequential orders and steps be stayed pending hearing and determination of the intended appeal.
2. The application is premised on the grounds stated in its body and on the supporting affidavit of the Dominic Njuguna Mbigi, counsel for the Applicant. It is stated that the Applicant is dissatisfied with the ruling herein delivered on 14th November, 2019 and has appealed against the same. The said ruling dismissed the Appeal herein for want of prosecution and allowed the release of the decretal sum to the Respondents. It is stated that the Applicant has filed a Notice of Appeal and has a good Appeal with high chances of success that stands to be rendered nugatory if the application herein is not allowed.
3. The application is opposed. It is stated in the replying affidavit that the suit herein was commenced in the year 2009 following the death of the deceased in a road traffic accident. That the judgment was delivered in the year 2012 in favour of the Respondents who have not been able to enjoy the fruits of the judgment due to the stay orders issued herein. That the Appeal herein was dismissed on 29th June, 2017 for want of prosecution but reinstated on 4th December, 2018 on condition that the Record of Appeal was compiled and the appeal to be fixed for directions within 90 days. That there was no compliance and the Appeal was once again dismissed for want of prosecution on 14th November, 2019. It is stated that the instant application is unmerited and an abuse of the process of the court. The court was urged to consider the plight of the widow and the children of the deceased.
4. The Applicant filed a supplementary affidavit stating that the proceedings from the lower court had not been released as the presiding officer's handwriting was difficult to read. The court was urged to allow the Applicant to exercise his right of Appeal.
5. I have considered the application, the response to the same and the submissions made by the respective counsel for the parties.
6. I have perused the record herein. The Appeal herein was dismissed for want of prosecution on 31st January, 2018. However, following an application, the Appeal was reinstated on condition that the Record of Appeal be compiled and served for directions within 90 days. The court noted that the lower court record had been availed. However the 90 days lapsed without any compliance.
7. The Respondent subsequently filed an application for dismissal of the Appeal for want of prosecution. Orders were also sought for the discharge of stay of execution orders and the release of the decretal sum that was held in a joint interest earning account. The application was allowed and thereby triggered the filing of the instant application.
8. The court record herein speaks for itself. This court has tried to balance the competing interests of both parties and has bent over backwards in a bid to have the Appeal heard on merits. It's taken about eight (8) years without the Appellant managing to compile the Record of Appeal. If the Appellant was diligent enough, he would have come back to court to explain his difficulties within the 90 days period given by the court. The Appellant did not do so and only woke up when an application for dismissal was once again filed. Litigation must at one point come to an end, otherwise it becomes a vicious cycle of application after application. I find no merits in the application for stay and dismiss the same with costs.

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

B. THURANIRA JADEN

JUDGE