

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYAMIRA

CIVIL APPEAL NO. 42 OF 2019

ERICK KOMBO MOSETI.....APPLICANT

- VRS-

**SAMWEL BOSIRE ANGWENYI & OBWOCHA ABRAHAM MOMANYI[Suing for
and on behalf of KEROKA RIVERSIDE SELF HELP GROUP].....RESPONDENTS**

RULING

Before me is the Notice of Motion dated 2nd March 2020 which seeks orders as follows: -

- “(a) THAT the application herein be certified as urgent and be heard ex-parte in the 1st instance**
- (b) THAT the honourable court be pleased to re-admit the appeal dismissed for default.**
- (c) THAT the honourable court be pleased to vary and set aside the proceedings of the 2nd day of March 2020 and re-instate the application dated the 18th February 2020 for inter-parties hearing.**
- (d) THAT the court be pleased to order for stay of execution of the decree and or any other consequential order emanating from KEROKA PMCC NO. 353 OF 2010 till the hearing and determination of this application.**
- (e) THAT the cost of the application be provided for.”**

The application was canvassed by way of written submissions and the same have been considered fully. I am however not persuaded that the application has merit. The applicant’s appeal was first admitted on 27th June 2019 upon a consent between the advocates for the parties. By that consent a stay of execution of the decree of lower court was granted upon the condition that the appellant would deposit the entire decretal sum either in an interest earning account in the joint names of the advocates or in court within thirty days. It was also agreed that the Record of Appeal would be filed and served within thirty days of the date the consent was recorded. The consent was recorded pursuant to a Notice of Motion filed by Counsel for the appellant on 19th June 2019. After recording the consent this court fixed the appeal for directions on 25th July 2019 but come that day Counsel for the appellant did not attend and the appellant who was personally in court indicated he had not given the Advocate instructions to enter into a consent. This court therefore vacated the order for stay of execution arising from the consent and granted the appellant the time he craved to retain another advocate. This was in lieu of striking out his application dated 19th June 2019. The court then fixed the appeal for further directions on 19th September 2019 but the appellant did not attend although the date had been fixed in his presence. This court did not dismiss the appeal. Instead it fixed it for further mention on 17th October 2019 on which date only Counsel for the respondent attended. This despite the fact that both sides had been served with a notice by the court. Nevertheless, once again this court declined an invitation by Counsel for the respondent to strike out the appeal for want of prosecution and fixed it for further mention on 17th November 2019. Counsel for the appellant attended and asked for more time to file the Record of Appeal. This court gave him seven (7) days to do so and fixed the appeal for directions on 14th November 2019 but come that date there was no attendance by either side and as the Record of Appeal had not been filed this court dismissed the appeal for want of prosecution. To-date close to one year since the appeal was lodged, the Record of Appeal has not been filed and neither has the decretal sum been deposited and the applicant has not taken any steps to set aside the consent. I find no merit in this application. It is an abuse of the court process. The same is dismissed with costs to the respondent. It is so ordered.

Signed, dated and delivered in Nyamira this 9th day of July 2020.

E. N. MAINA

JUDGE

Judgement delivered virtually through Microsoft Teams