



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO.77 OF 2013**

**COAST BUS SAFARIS.....1<sup>ST</sup> APPELLANT**

**COASTLINE SAFARI.....2<sup>ND</sup> APPELLANT**

**COAST BUS (MOMBASA) LIMITED.....3<sup>RD</sup> APPELLANT**

**VERSUS**

**WILLIS OMUSINDE OMBOYO**

**(Suing as the Legal Representative**

**of the Estate of the late HEZRON**

**OCHIENG OMBOYO (DECEASED).....RESPONDENT**

**RULING**

This matter was coming up for mention to confirm the directions of Justice Njoki on 28th day of November, 2018 to the effect that the respondents file and serve the recorded appeal within 60 days, and thereafter the appeal for directions before a Judge within 15 days of this . Failing to comply with these the directions the Judge directed that the Applicant be at liberty to move the Registrar to place the file before a Judge for dismissal of the appeal for want of prosecution.

It is now almost four months since directions were given and the appeal has not been set down for directions as directed by Hon. Justice Njoki.

The Applicants counsel has then prayed that the appeal be dismissed for want of prosecution since the appellant has failed to comply with the directions of 28<sup>th</sup> November, 2018.

Mr Kagam, holding brief for the appellants counsel explained that the reason that the appellants haven not complied with the directions is because they had yet to be furnished with the typed recorded proceedings .He prayed that they be given a further 21 days to file and serve the said record of appeal since they had information that the proceedings were now ready.

This was opposed by the respondents counsel on the ground that substantive justice applies to both sides and that the Respondents were being denied chance to enjoy the fruits of their judgment.

I have considered the arguments by both counsels with regard to whether the appeal should be dismissed for want of prosecution. It is true that the record of appeal is yet to be filed and served. It is also true that the appeal has not been listed for directions.

However, from the explanation given by the appellant's counsel, where they have indicated that the proceedings are now ready, they are allowed one more chance to have this appeal set down for directions.

The appellants are therefore granted 21 days to file and server the record of appeal. Failure to comply with the directions will render the appeal dismissed for want of prosecution.

Mention on 3.6.2019 to confirm.

(a) Filing and service of recorded appeal

(b) For the directions

**Ruling signed and dated this 9<sup>th</sup> day of May, 2019.**

**LADY JUSTICE D. O.CHEPKWONY**

**Ruling delivered and dated this 13<sup>th</sup> day of May, 2019**

**JUSTICE P. J.OTIENO**

In the presence of:

Mr Kuhere for the Respondents

Miss Mutune for Ogunde for Appellants

C/clerk- Bancy