



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 450 OF 2014

KHAN HUSSEIN.....1ST APPELLANT

PETER NGANGA KARIUKI.....2ND APPELLANT

VERSUS

HUDSON MUYENDO CHEPSUGE.....RESPONDENT

RULING

1. This ruling relates to the Notice to show cause issued against the parties on 23rd April, 2019 requiring them to show cause as to why the appeal should not be dismissed for want of prosecution.
2. In answer thereto, the replying affidavit sworn by *Kelvin Ngure* was filed on 16th July, 2019 on behalf of the appellants. The deponent stated that upon filing the memorandum of appeal dated 6th October, 2014 on the 13th of October, 2014, the appellants through their advocates wrote to the Executive Officer, requesting for certified copies of the judgment and decree issued by Honourable A. Lorot (Principal Magistrate) on 15th September, 2014 in CMCC NO. 228 OF 2012; as well as the typed proceedings to enable them prepare and file a record of appeal; but that there was no response. That the appellants were therefore unable to put in their record of appeal in good time.
3. It was the deponent's further assertion that the appellants have since obtained the requisite documents and went ahead to file their record of appeal on 5th June, 2019.
4. The deponent communicated the appellants' interest and willingness to prosecute the appeal, adding that the appellants are confident they have an arguable appeal and urged that they be granted the opportunity to prosecute it to conclusion.
5. I have taken into account the averments made in the aforesaid affidavit. I have equally perused the record and established that the appellants had written to the Executive Officer at Milimani Commercial Courts vide the letter dated 31st January, 2017 and received on 10th February, 2017 requesting for typed and certified copies of the proceedings, and certified copies of the judgment and decree. There is nothing to ascertain whether or not the said letter elicited a response from the court.
6. That notwithstanding, going by the record it would appear the trial court file was forwarded to the Deputy Registrar-Civil Division, accompanied by the letter dated 1st August, 2018 and received on 11th September, 2018.
7. I am able to ascertain from the record that the Deputy Registrar thereafter issued a Mention Notice dated 12th October, 2018 to the parties, requiring their attendance in court on 16th November, 2018 for purposes of obtaining directions in regard to the appellants' failure to file their record of appeal. It is not clear whether the said Mention Notice was served upon the parties.
8. Be that as it may, the Deputy Registrar vide the correspondence dated 16th October, 2018 wrote to the appellants through their respective firm of advocates, requesting that they comply by filing and serving their record of appeal; I am able to determine that the correspondence was received by the advocates on 19th October, 2018. The appellants made no mention of this in the affidavit of Kelvin Ngure.
9. From the foregoing, I have gathered that whereas there has been a delay in the filing of the record of appeal, I am equally appreciative of the fact that it is possible the appellants were not informed as soon as the relevant documents were made available so as to enable them prepare and file their record of appeal at the earliest. I have also considered that the record of appeal has since been filed and that no objection has been raised by the respondent in respect to the prosecution of the appeal. In the circumstances, I am satisfied that the appellants have reasonably explained the delay in filing the record of appeal and it would only be in the interest of justice to grant them the opportunity of proceeding with its prosecution.
10. Consequently, the appellants are ordered to ensure the prosecution of their appeal within 60 days from today, failing which the same shall

stand dismissed.

Dated, signed and delivered at **NAIROBI** this 3rd day of October, 2019

L. NJUGUNA

JUDGE

In the presence of:

..... for the 1st and 2nd Appellants

..... for the Respondent