



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 568 OF 2014

TIMOTHY NDERI.....APPELLANT

-VERSUS-

RUTH SIMORO WANAMI.....RESPONDENT

RULING

1. This ruling is the product of the notice to show cause issued by this court on 23rd April, 2019 requiring that the parties show cause as to why the appeal should not be dismissed for want of prosecution.

2. The affidavit of *Kevin Kinyanjui Njoroge* was sworn on behalf of the appellant. The deponent stated that following the determination of the suit in CMCC NO. 9013 OF 2005, his firm of advocates wrote to the Executive Officer requesting for certified copies of the typed proceedings, decree and judgment to enable them prepare the record of appeal; adding that only typed copies of the proceedings were recently availed. For this reason, the deponent urged this court not to dismiss the appeal.

3. I have taken into consideration the averments made in the aforesaid affidavit. I have established that judgment was entered by the trial court on 20th June, 2014 in CMCC NO. 9013 OF 2005.

4. The trial court record discloses that the appellant through his firm of advocates vide the letter dated 1st August, 2016 requested for the handwritten proceedings in the suit for typing, to which the subordinate court responded through the letter dated 8th August, 2016 by informing them that their request for the typed proceedings has been allowed.

5. The record also shows that the lower court file was forwarded to the Deputy Registrar-High Court on 30th January, 2019 and there is a forwarding letter evidencing this. Thereafter, the Deputy Registrar issued a Notice dated 31st January, 2019 to the appellant's advocates directing that they file their record of appeal within 21 days from the said date. The Notice was received on 6th February, 2019.

6. The appellant has annexed a copy of the letter dated 26th April, 2019 requesting for the decree and certificate of costs from the lower court; it would appear there has been no response to that letter.

7. Suffice it to say that I am satisfied that the delay in preparing and filing the record of appeal has been the result of circumstances beyond the appellant. Nevertheless, I admit that given the age of the appeal, the same ought to be heard and determined at the earliest opportunity possible.

8. In the circumstances, I will grant the appellant a chance to prosecute his appeal and make the following consequent orders:

a) The appellant shall thereafter file his record of appeal within 14 days from today.

b) The applicant shall ensure prosecution of the appeal within 120 days from the date of filing the record of appeal, failing which the appeal shall stand dismissed.

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

.....

L. NJUGUNA

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent