



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL DIVISION**

**HIGH COURT CIVIL APPEAL NO. 150 OF 2015**

**MOBLIN LIMITED.....APPLICANT**

**VERSUS**

**GRACE ATIENO SAKWA.....1<sup>ST</sup> RESPONDENT**

**CLIFF OKETE SWAKA.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The application dated 3<sup>rd</sup> July, 2019 seeks orders that this Honourable Court be pleased to reinstate the Appellant's appeal for hearing on merit upon considering the Appellant's steps taken in following up on the typed proceedings and the application dated 28<sup>th</sup> June, 2019 for extension of time.
2. Secondly, that upon grant of prayer 2 above, this Honourable Court be pleased to extend reasonable time to allow the Appellant to follow up on the typed proceedings and file the Record of Appeal herein.
3. It is stated in the grounds and the affidavit in support that in the Ruling herein delivered on 28<sup>th</sup> March, 2019, the Applicants were directed to file the Record of Appeal within 90 days. The failure to file the application for the extension of time within which to file the Record of Appeal is blamed on the missing file. The delay in filing the Record of Appeal is blamed on non-availability of the lower court file and the typed proceedings thereof.
4. In the replying affidavit filed in opposition to the application, it is stated that the Applicant ought to have appealed to the Court of Appeal instead of filing the application at hand. That it is now 4 years since the Judgment the subject of the Appeal herein was delivered. That the Respondents are suffering while the Applicant has demonstrated no interest in following up on the typing of the proceedings.
5. I have considered the application and the response to the same.
6. The Applicant has annexed a letter dated 28<sup>th</sup> June, 2019 addressed to the Deputy Registrar protesting about the non-availability of the court record in order to file their application for extension of time within which to file the Record of Appeal. The 90 days period given to the Applicant lapsed on the same date i.e. the 28<sup>th</sup> June, 2017. There is no other evidence of any earlier request for the file. However, the Applicant has exhibited a letter dated 13<sup>th</sup> April, 2019 and stamped as received at the Milimani Commercial Courts requesting for the typed proceedings of the lower court.
7. There is a request herein dated 18<sup>th</sup> May, 2015 from the Deputy Registrar of this Court addressed to the Chief Magistrate, Milimani Commercial Courts for the Lower Court file to be availed but the same is yet to be availed. The court has therefore failed to play its role and have the lower court file availed. The Applicant who has already deposited the decretal sum cannot be blamed for the non-availability of the lower court file.
8. With the foregoing, the application is allowed with costs in cause. The Deputy Registrar to follow up the typed proceedings of the Lower Court and avail the said file to this court on priority basis.

**Dated, signed and delivered in Nairobi this 7<sup>th</sup> day of Nov., 2019**

**B. THURANIRA JADEN**

**JUDGE**