

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL APPEAL NO. 81 OF 2010

CHRISTOPHER JUMA.....APPLICANT

VERSUS

BLAZING SADDLES LIMITED.....RESPONDENT

RULING

1. The application dated 26th March, 2018 seeks the following orders:

- 1. That the Honourable court be pleased to set aside the order made on 16th June, 2016 dismissing the Applicant's appeal.**
- 2. That the Honourable court be pleased to reinstate the Applicant's appeal.**
- 3. That the costs of the application be provided for.**

2. It is stated in the grounds and affidavit in support of the application that the appeal herein was dismissed on 16th June, 2016 for want of prosecution. It is contended that the Applicant was not served with the Notice to Show Cause and was not aware that the appeal was coming up for dismissal. That the Applicant became aware of the dismissal in March 2018 while he was following up on the typed proceedings in the lower court. The delay in prosecuting the appeal is blamed on the failure by the lower court to supply copies of the proceedings and judgment.

3. The application is opposed. It is stated in the replying affidavit that the Applicant has failed to explain the delay of over eight (8) years in prosecuting the appeal. That the appeal has no chances of success and the dismissal ought to be upheld.

4. I have considered the application, the response to the same and the submissions made by the respective counsels for the parties.

5. The appeal herein was filed on 12th March, 2010. Although the letter dated 4th March, 2010 requesting for typed proceedings has been exhibited herein, the same bears no received stamp by the court. The next letter is dated 7th March, 2018, about eight years later. By then the appeal had already been dismissed. It has not been demonstrated what steps the Applicant took in the intervening period.

6. A perusal of the court file has not yielded the copy of the Notice to Show Cause that was served on the Applicant. The lower court record has also not been availed. Consequently, I allow the application on the condition that the Record of Appeal is compiled and served and appeal listed for directions within 90 days from date hereof. In default the appeal to stand dismissed.

Date, signed and delivered at Nairobi this 2nd day of Oct., 2018

B. THURANIRA JADEN

JUDGE