



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO. 55 OF 2017**

**GEOFFREY KIRIMI & 8 OTHERS ..... APPELLANTS**

**-VS-**

**NAOMI M'MWIRICHIA ..... RESPONDENT**

**RULING**

1. Before me is a Notice of Motion brought under **Sections 1, 1A, 3 & 3A of the Civil Procedure Act** in which the appellants seek the stay of execution of the judgment dated 30<sup>th</sup> June 2017, in Githongo SRMCC NO. 39 of 2016 pending the hearing and determination of the application. There is also an order for the setting aside of the orders of dismissal of the appeal made on 7<sup>th</sup> June 2018 and for its reinstatement.
2. The grounds upon which the Motion was grounded were set out on the body of the Motion and in the affidavit sworn by the 2<sup>nd</sup> appellant, Asenath Kathure. These are that on 7<sup>th</sup> June 2018, the matter was listed as number 65 in the cause list; that when counsel for the appellant entered the court room at about 9:40 am, the same had been dismissed. That the appellants were unable to prepare the record of appeal because the lower court file had been transferred to Meru High Court.
3. When the application came up for hearing on 5<sup>th</sup> July 2018, the court directed that the application be determined by way of written submissions. As at the time of writing this ruling, none of the parties had filed their submissions as directed.
4. This is an application by the applicants for the setting aside of the order of dismissal of the appeal made on 7<sup>th</sup> June 2018. The applicants contended that the matter had been filed for hearing by the respondent instead of being set down for directions; that they had not refused to prepare the record as there was confusion when they applied for proceedings at the lower court in Githongo and they were advised that the file had been forwarded to Meru High Court.
5. I have carefully considered the application. It is not in dispute that on 7<sup>th</sup> June 2018, Majanja J dismissed the appellants' appeal when he found that the record of appeal had not been filed as had been directed on 8<sup>th</sup> May 2018 by Jaden J. from the application, The applicants seem to suggest that the reason for dismissal of the said appeal was because the matter had been filed for hearing by the respondent instead of being set down for directions.
6. A careful perusal of the record shows that contrary to their assertions, the appeal was dismissed for failure to comply with the orders of 8<sup>th</sup> May 2018, which required the appellants to compile, file and serve the record of appeal for purposes of the hearing on 7<sup>th</sup> June 2018. Those orders were not complied. The appellants contention that it is the respondent who had filed the matter for hearing on 7<sup>th</sup> June 2018 instead of directions is therefore not true and without basis. The record shows that Jaden J had clearly set down the appeal for hearing on 7<sup>th</sup> June 2018, and the appellants cannot therefore be heard to say that the appeal was coming up for directions.
7. The allegation that the appellants had been unable to prepare the record because of the unavailability of the lower court file at Githongo is unsupported by any evidence. There is nothing to show that they sought to access the file either at Githongo or Meru High Court and they failed to get it or if they failed what action or steps they took.
8. The appellants Advocates were notified by the Deputy Registrar as early as 15/11/17 that the appeal had been admitted and that they should prepare the record but failed to act on that notice. That is what provoked the court to list the appeal for directions before Jaden J on 08/05/2018. It is clear that the appellants had no intention of either lodging or prosecuting their appeal.
9. Accordingly, taking into totality all the circumstances in this case and in absence of any reasonable explanation from the appellants as to why the orders of 8<sup>th</sup> May 2018 were not complied with. I find the application to be without merit and I accordingly dismiss the same with costs to the respondent.

**SIGNED at Meru**

**A. MABEYA**

**JUDGE**

**DATED and DELIVERED** at Meru this 11<sup>th</sup> day of October, 2018.

**A. ONG'INJO**

JUDGE