

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO.666 OF 2013

LANDMARK HOLDINGS LTD.....APPELLANT

VERSUS

MWENDE MWANIA.....RESPONDENT

(Being an appeal from the judgment of Honourable Chief Magistrate Mrs. M. Murage

at Milimani Commercial Courts dated 11th December, 2013 in CMCC No. 6245 of 2009)

RULING

The Appeal herein was filed on the 20th day of December, 2013. On the 24th October, 2014, the Appellant/Applicant filed an application for stay pending the hearing and determination of the Appeal which was considered by Justice Onyancha and the Judge allowed the same on condition that the decretal sum was to be deposited in court. That ruling was delivered on the 5th November, 2014 and it's the last time the matter was in court.

The Appeal was listed on the 27th July, 2018 for notice to show cause on which date, counsel for the Appellant sought leave to file an affidavit in response to the same.

The court has considered the contents of the said affidavit sworn by Peter Kabue Thumi, Advocate sworn on the 28th September, 2018.

In the said affidavit, he deposes that the lower court file was misplaced and he has been having problems in its retrieval at the registry. That he has on diverse dates written letters to the Executive Officer seeking to know the position of the file but his efforts have borne no fruits as the file is still missing. He has annexed copies of the necessary correspondences to demonstrate his assertion. He avers that the Appellant is keen on prosecuting the Appeal and that he has already filed the Record of Appeal. That it would be in the interest of justice that the Appellant is given a chance to prosecute its Appeal and the same be determined on merits.

The court has considered the contents of the aforesaid affidavit. I have also perused the Record of the proceedings. I first wish to note that no Record of Appeal has been filed in this Appeal. The court has looked at the letters addressed to the Executive Officer enquiring about the missing court file. All those letters were not received in the court registry and it is not possible for this court to know if the letters were done on the alleged dates or at all. The first letter is dated 20th April, 2014 in which Counsel for the Appellant seems to register his profound disappointment and concern regarding the absence of the court file from the registry. That letter just like with all the others was not received in the court registry and its doubtful if these letters found their way to the court registry.

I find that the reason given by the Appellant for his failure to prosecute the Appeal is not plausible. The Appeal is hereby dismissed for want of prosecution.

Dated, Signed and Delivered at Nairobi this 15th day of **November, 2018**

L. NJUGUNA

JUDGE

In the presence of:-

..... **For the Appellant**

..... **For the Respondent**