



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO.587 OF 2013

NAOMI WATIRI CHEGE.....APPELLANT

VERSUS

JOHN NG'ANG'A KANINI.....RESPONDENT

(Appeal from the Judgment and decree of Honourable SK. Arome in Principal Magistrate's Court at Kiambu delivered on 18th October, 2013 in PMCC No. 709 of 1995)

RULING

The Appeal herein was filed on the 14th day of November 2013 but due to the slow pace at which it was being prosecuted, the court served the parties herein with a notice to show cause under Order 42 Rule 35(2) to appear before it on the 27th July, 2018 and show cause why the Appeal should not be dismissed for want of prosecution.

On the said date, counsel for the Appellant sought time to file an affidavit in response to the notice to show cause which he filed on 12th September, 2018.

In the affidavit, he depones that prior to filing of the Appeal he had written to the trial court at Kiambu, requesting for the proceedings, decree and a copy of the judgment. He has annexed the letter dated the 29th October, 2013 and marked as annexure SK1.

That on the 31st March, 2014 the lower court file was forwarded to the High Court and it was acknowledged via a letter dated 3rd March, 2014 by the Deputy Registrar, Family Division.

He further depones that, on 1st April 2015, he wrote a letter to court seeking a mention date for directions. He has annexed a copy of that letter as annexure SK 3 and thereafter he drafted the index and record of Appeal but he was unable to file the same as the court file could not be traced. That on the 19th May 2017 he again wrote to the court seeking a date for directions, that letter is marked as annexure SK 6. He avers that the Appellant has been willing to prosecute the Appeal were it not for the missing lower court record. He has prayed to the court to give him 7 days to file a record of Appeal and thereafter take a date for directions.

The court has considered the contents of the affidavit showing cause why the Appeal should not be dismissed. From the annexures displayed to the court, it is clear that the Appellant has been making tremendous efforts to have the Appeal move forward but has been frustrated by the disappearance of the lower court file without which the Appeal could not move.

I have noted from the annexed correspondences that the file was forwarded to this court and received via a letter dated 3rd March 2014. The file must be lying somewhere in the registry. It is therefore not the Appellant's fault that the Appeal has not been prosecuted. He has done his best to follow up the matter.

In the premises, I do order that the Appellant do file the Record of Appeal within 15 days from the date of this ruling and thereafter fix the Appeal for directions within 15 days from the date of filing of the Record of Appeal failing which, the Appeal shall stand dismissed.

It is so ordered.

Dated, Signed and Delivered at Nairobi this 5th day of November, 2018

.....

L. NJUGUNA

JUDGE

In the presence of:-

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

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