

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO.484 OF 2013

SECUREX AGENCIES KENYA LIMITED.....APPELLANT

VERSUS

PAUL OTIENO WAMBEDHA.....RESPONDENT

(Appeal from the Judgment of Honourable Ole Keiwua (Mr) at Chief Magistrate's Court at Nairobi delivered on 23rd August, 2013 in CMCC No. 2474 of 2013)

RULING

The matter herein was on the 20th July, 2018 listed for Notice to show cause why it should not be dismissed for want of prosecution. In response to the same, Counsel for the Appellant filed a replying affidavit sworn by Pramod Patel Advocate explaining why it has not been prosecuted.

In the said affidavit, he depones that the filing of the record of Appeal has been delayed by failure on the part of the Lower Court registry to furnish the Appellant with a certified copy of the Decree as the lower court file cannot be traced.

That the Appellant has made numerous attempts to follow up the Decree but the same has not been availed to it as the Lower Court file has been missing. He avers that it is not the fault of the Appellant that the Appeal has not been listed for directions and that dismissing the Appeal for want of prosecution would be prejudicial to the Appellant.

He prays that the Lower court Registry be directed to trace the file and seal the Decree so that the Record of Appeal can be completed and the Appeal be heard on merits.

The court has considered the affidavit in response to the Notice to show cause and the reasons given for the slow pace at which the Appeal is being prosecuted. The court notes that the lower court file had been forwarded to this court but on 16th December 2015, it was returned back for purposes of extraction of the Decree. Since then, the Appellant has not done anything much to follow up the matter as the only letter in that regard is dated 24th July, 2018 which was done after the matter was in court on 20th July for Notice To Show Cause.

The court, however, notes that the Appellant has filed a Record of Appeal and a supplementary Record but the Decree is yet to be extracted. The court shall not dismiss the Appeal but since it's an old matter, I hereby order that it be prosecuted within a period of 90 days from the date of this ruling failing which it shall stand dismissed. To enable the Appellant to prosecute his Appeal, I make a further order that the Executive Officer in charge of Chief Magistrate's Court to extract and seal the Decree and forward the same together with the Lower court file to this court, within 21 days from the date of this ruling. This order to be extracted and served by the Appellant and the matter to be mentioned on 29th November, 2018 to confirm compliance.

Dated, Signed and Delivered at Nairobi this 8th day of November, 2018

.....

L. NJUGUNA

JUDGE

In the presence of:-

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

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