

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL APPEAL NO. 79A OF 2006

NEW SIMBA SECURITY GUARDS.....APPELLANT

VERSUS

KAKAMEGA P. CONVERTERS LTD.....RESPONDENT

(An appeal arising from the ruling and order of the Hon. E Obaga, Senior Resident Magistrate (SRM), in Kakamega CMCCC No. 519 of 2003 of 19th June 2006)

RULING

1. The appeal was lodged herein on 20th September 2006 by way of a memorandum of appeal of even date. The same sought the setting aside of orders made by the lower court dismissing the lower court suit for want of prosecution.
2. On 14th December 2010 a Motion dated 22nd November 2010 was lodged herein seeking dismissal of the appeal for want of prosecution. Counsel appearing for the appellant swore an affidavit in reply saying that he had not been in contact with his client, adding that the appellant was still keen on prosecuting the appeal.
3. The Motion of 22nd November 2010 was prosecuted on 16th June 2011 before Kimaru J. Mr. Ogotu urged the application, while Mrs. Muleshe opposed it. The Judge pronounced himself on it on 20th July 2011. He allowed the Motion on the grounds that the appellant was not keen on prosecuting, the appeal noting that it had failed to contact its advocates.
4. The application that I am called upon to determine is the undated Motion filed herein on 8th November 2016. It is brought at the instance of the counsel for the appellant. It seeks the setting aside of the orders made on 20th July 2011 dismissing the appeal and for the reinstatement of the appeal. He talks of failing to prosecute the appeal in HCCA No. 79A of 2016 because on the file was lost on 19th October 2016, which in very humble view, does not sense. The instant appeal is HCCA No. 79A of 2006, and the events that led up to the dismissal of the appeal had nothing to do with the year 2016. In any event it is not even clear which file is said to have been lost.
5. Directions were given for disposal of the application by way of written submissions. Both sides have filed their respective written submissions. I have perused through them and noted the arguments advanced by both sides.
6. I note that the dismissal was in 2011, and the appellant did not move the court until 2016, five years later, for setting aside of the orders. The Motion does not raise any new matters. Indeed, what the applicant states in the supporting affidavit are matters that should have been raised in 2011. The orders of 2011 were made on merit, after the court had heard both sides, if the appellant was unhappy with the outcome it should have appealed.
7. I need not say more. There is no merit in the said Motion. It exists for only one purpose, dismissal, and I do hereby dismiss the same, with costs to the respondent.

DATED, SIGNED and DELIVERED at KAKAMEGA this 3RD DAY OF DECEMBER , 2018

W. MUSYOKA

JUDGE