



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO. 654 OF 2012**

**VINCENT MOKAYA OUNO...APPELLANT/APPLICANT**

**-VERSUS-**

**KIMANI ALEX.....RESPONDENT**

**RULING**

1. The appellant has brought a Notice of Motion dated 23<sup>rd</sup> August, 2018 under Section 3A of the Civil Procedure Act; Order 12, Rule 7; Order 45, Rule 1; Order 50, Rule 5 and Order 51, Rule 1 of the Civil Procedure Rules; supported by the grounds set out on the body thereof and the facts deponed in the sworn affidavit of **Vincent Mokaya Ouno**. The appellant seeks the orders hereunder:

***i) THAT the order made on 13<sup>th</sup> October, 2017 be reviewed and/or set aside.***

***ii) THAT the time for fixing the appeal for directions may be extended.***

***iii) THAT the appeal be reinstated.***

***iv) THAT the costs of the application be in the cause.***

2. The deponent herein, Vincent Mokaya Ouno, stated that the record of appeal was filed in accordance with the timelines ordered by the court on 13<sup>th</sup> October, 2017. However, the deponent averred that the matter was not listed for directions for the reason that the decree had not been issued by the lower court at the time.

3. The Motion stands unopposed since the respondent has not filed a reply to the same. In view of this fact, the court has considered the grounds set out in the application together with the affidavit in support thereof.

4. The first issue for this court to decide is whether the appellant has established reasonable grounds to warrant a review and/or setting aside of the order made on 13<sup>th</sup> October, 2017.

5. Order 45, Rule 1 of the Civil Procedure Rules set out the grounds on which a court order can be reviewed. It would appear that the Motion is brought under the ground of 'sufficient reason.'

6. This court recalls from the record that when the appellant appeared before it on 1<sup>3th</sup> October, 2017, his counsel confirmed that the lower court file had been availed and that the proceedings were ready, thereby leading the court to make an order directing the appellant to file a record of appeal and have the matter fixed for directions within 30 days of the date thereof, failure to which the appeal was to stand dismissed. The record confirms that the record of appeal was filed on 1<sup>3th</sup> November, 2017 in compliance with the court order. However, the matter was not listed for directions within the stipulated timelines and the appellant has explained in his application that the decree was issued on 1<sup>4th</sup> November, 2017. The appellant thereafter filed a supplementary record of appeal on 1<sup>6th</sup> November, 2017 to include a copy of the decree and requested that the matter be listed for directions vide a letter dated 1<sup>0th</sup> November, 2017.

7. Drawing from the above, it is evident that the appellant took steps to have the matter listed for directions. However, the concern is that the appellant did not comply with the unequivocal order previously made. In actual fact, no mention of the decree was previously made by the appellant and it is on this basis that the court made the appropriate order under the circumstances. Not only so; the order made was clear-cut and no objection was raised by the appellant's advocate.

8. Further to the above, the court has observed that the letter requesting for directions on the appeal was received by the court on 14<sup>th</sup> December, 2017 despite the fact that the same is dated 10<sup>th</sup> November, 2017. The appellant has not given any explanation for the delay of over one (1) month in presenting the letter. The appellant's conduct raises doubt as to whether there was genuine regard for the order of 13<sup>th</sup>

October, 2017. There is no question that the time for compliance with the order lapsed on 13<sup>th</sup> November, 2017 and as at such time, the appellant had only managed to file the record of appeal.

9. To add on, it would seem that no serious action was taken by the appellant between the time of filing the record of appeal and 27<sup>th</sup> July, 2018 when the matter came up in court for directions. On this particular day, this court acknowledged that there was non-compliance by the appellant, hence upholding the dismissal of the appeal as at 13<sup>th</sup> November, 2017.

While the court is alive to the fact that under this provision, time may be enlarged even after the same has expired, the appellant should have been prompt in seeking an extension of time but he took too long to do so.

10. However, though no good reason has been given why a date for directions was not taken within the time stipulated in the Order, I will allow the application in the interest of justice, and order that the Appeal be listed for directions within 15 days from today.

It is so ordered.

**Dated, signed and delivered at NAIROBI this 13<sup>th</sup> day of December, 2018.**

**L. NJUGUNA**

**JUDGE**

In the presence of:

..... for the Appellant/Applicant

..... for the Respondent