

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CIVIL DIVISION

HIGH COURT CIVIL APPEAL NO. 586 OF 2010

NATION MEDIA GROUP LTD.....APPLICANT

VERSUS

KENNETH SIMIYU KANGUKHARESPONDENT

RULING

1. The application dated 17th August, 2016 principally seeks order that the Appellant's appeal be struck out or dismissed for the reason that the Appellant has not taken out essential steps to prosecute the appeal as required.
2. It is stated in the affidavit in support that the judgment of the Lower Court was delivered on 13th September, 2010. A ruling on an application to set aside the said judgment was delivered on 25th November, 2010. On 21st December the Appellant filed the appeal herein. The Applicant's complaint is that the Respondent delayed for six years before directions were taken pursuant to Order 42 rule 12 and Order 42 rule 13(1) Civil Procedure Act. That the applicant made an application for the dismissal of the appeal for want of prosecution but withdrew the same to pave way for the hearing of the appeal. That the Respondent nonetheless went to sleep and appears not interested in prosecuting of this appeal
3. The application is opposed. According to the affidavit filed by the Respondent the delay in setting down this appeal for directions was due to lack of typed Lower Court proceedings, which prompted this court to return the file to the Lower Court. That the filing by the Applicant of the application dated 16th April, 2012 stood in the way of the fixing the appeal for directions.
4. I have considered the application, the reply to the same and the submissions of the counsels for the respective parties.
5. The court record reflects that the Lower Court record complete with typed proceedings was availed to this court in the year 2013. The record of appeal and the supplementary record of appeal were filed the same year. The application dated 15th April, 2013 which sought an order for the dismissal of the appeal for want of prosecution was withdrawn in the year 2013. On 14th November, 2014 the appeal was certified ready for hearing. The parties were directed to take a hearing date in the registry on priority basis. It seems thereafter the Respondent did not take any steps to fix the appeal for hearing. The Applicant did not take any step either until the filing of this application under consideration.
6. The Respondent cannot escape the blame for the delay. It's the Applicant who came to this court and obtained stay of execution orders way back in the year 2011. Be as it may, this Court is inclined to give the appeal a chance to be heard on merits. Consequently the application is dismissed. The Respondent's to fix the appeal for hearing within the next 90 days from the date hereof. In default the appeal to stand dismissed. The costs of this application to go to the Applicant in any event.

Dated, signed and delivered at Nairobi this 10th day of Nov.,2016

B. THURANIRA JADEN

JUDGE