



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CIVIL APPEAL NO. 110 OF 2012

LCHORO LE LEKOLOL SELF HELP GROUP

(Through Chairman STANLEY KEPENDE LENYAKOPIRO.....1ST APPELLANT

DAVID KIMANI NDUNG'U.....2ND APPELLANT

VERSUS

GEMS AND INDUSTRIAL MINERAL LIMITED.....RESPONDENT

(An appeal Against the Ruling of Moses N. Masibo – Commissioner of Mines and Geology In the Matter of Lchoro Le Lekolol Self Help Group and Gems and Industrial Mineral Limited)

RULING

Notice to show cause why this suit should not be dismissed for want of prosecution had been issued for parties to show cause on 15.1.2015. The parties showed cause on 5.5.2015.

Mr. Karweru told the court that he had applied for proceedings to appeal against the ruling delivered by this court on 4.7.2013. So far the proceedings have not been availed to him. I do find that the court file has a letter dated 12.7.2013 written by the firm of Karweru, & Co. Advocates asking that certified copies of the proceedings be availed to the firm. I also find in the court file a Notice of Address for Service filed by the firm of Kairu & McCourt for the respondent, which notice indicated that the firm of Kairu MacCourt had received a Notice of Appeal from the firm of Karweru & Co. Advocates.

Mr. Murithi supported the dismissal of the suit. He said that the appellants had been indolent and that since 2012, they had not prosecuted their case. Regarding the appellants' application to be availed with a copy of the proceedings to enable them appeal against this court's ruling delivered on 4th day of July, 2013, Mr. Murithi submitted that the appellants ought to have followed up the matter.

I have considered the parties submissions. I do agree with Mr. Murithi that the appellants ought to have followed up the issue of obtaining typed and certified proceedings. It is not enough to blame this court's Deputy Registrar.

On 9.4.2015 Mr. Murithi told this court that the file for this suit had been misplaced. On 5.5.2015, Mr. Karweru for the appellants confirmed this position. I find that this reality alone merits the granting of the benefit of doubt to the appellants. In the circumstances, I find that sufficient cause has been shown to convince this court that this suit should not be dismissed for want of prosecution. I issue the following orders:

1. *The appellants to follow up the issue of typed and certified proceedings within 30 days and in*

- this respect the Executive Officer of this Court is directed to facilitate the apposite process.*
- 2. The appellants either show evidence that their intended appeal is active or proceed to have this suit listed for hearing within 60 days.*

It is so ordered.

Delivered in Open court at Meru this 5th day of May, 2015 in the presence of:

Cc. Daniel/Lilian

Karweru for Appellants

Murithi h/b Mc Court for Respondent

P. M. NJOROGE

JUDGE