



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

CIVIL APPEAL NO. 38A OF 2006

JOSEPH ONYANGO WANYAMA.....APPELLANT/RESPONDENT

VERSUS

CHARLES JUMA OLOO.....RESPONDENT/APPLICANT

AND

CHRISPINUS OKUMU JUMA.....INTERESTED PARTY/APPLICANT

R U L I N G.

1. **CHARLES JUMA OLOO** and **CHRISPINUS OKUMU JUMA**, hereinafter referred to as the Respondent and Interested Party respectively, filed the notice of motion dated 23rd April, 2015 against Joseph Onyango Wanyama, hereinafter referred to as the Appellant praying for the appeal to be dismissed for Appellant's failure to comply with the orders of 28th January, 2015. The application is based on the four grounds on its face and the Respondent's supporting affidavit sworn on 23rd April, 2015.

2. The Appellant opposed the application and filed the undated replying affidavit on 28th May, 2015, which is the same day the court heard the rival submissions.

3. The issue for determination is whether the Appellant has failed to comply with the orders of 28th January, 2015 and if so whether the appeal should be dismissed.

4. The court has considered the grounds on the application, rival submissions, the court's record, supporting and replying affidavits and find as follows;

a) That among the orders of 28th January, 2015, the Appellant was ordered to ensure the record of a appeal is served within 60 days and an affidavit of service filed. The 60 days lapsed on or about 28th March, 2015 and the court record does not contain an affidavit of service to confirm that the Appellant has served the record of appeal on the Respondent to date.

b) That the Appellant has conceded in his replying affidavit that he has not complied with the court order of 28th January, 2015 and hastened to offer an explanation. He deponed that he has been pursuing the court registry to obtain proceedings which he needed to enable him comply with the orders. The Appellant has however not annexed any copies of the correspondence that he may have engaged with the court registry. He

has also not annexed receipts to show he had paid for any Lower court proceedings. The only document the court traced in the court file was a letter dated 18th March, 2015 to the Deputy Registrar by J.V. Juma advocate making enquiries about the proceedings of Lower court case number 460 of 1996. The said J.V. Juma advocate is however not on record for the Appellant or any of the other parties.

c) That the Appellant has never moved the court for extension of time to comply with the orders of 28th January, 2015. The Respondent and Interested party were therefore within their rights to file the application dated 23rd April, 2015 seeking to dismiss this appeal for non compliance with the orders of 28th January, 2015. That the court had in its ruling of 28th January, 2015 at paragraph 11 executed the delay attributed to the Appellant in the finalization of the appeal and had given him the 60 days to engage counsel and serve the record of appeal but he did not do so. The court orders are not issued in vain but to be complied with.

d) That the foregoing leads the court to agree with the Respondent's and Interested Party's contention on their ground 'C' that the Appellant is not Interested in prosecuting this appeal.

5. That having found as in 4 above, the court finds that the Appellant has failed to comply with the orders dated 28th January, 2015 requiring him to serve the record of appeal in 60 days which ended on or about 28th March, 2015. The Application dated 23rd April, 2015 is allowed and the appeal is dismissed with costs.

It is so ordered.

S. M. KIBUNJA,

JUDGE.

DATED AND DELIVERED ON...24TH .DAY OF...JUNE.....2015.

IN THE PRESENCE OF;

APPELLANT/RESPONDENTPRESENT.....

RESPONDENT/APPLICANT.....PRESENT.....

INTERESTED PARTY/APPLICANT...ABSENT.....

COUNSEL MR. FWAYA FOR RESPONDENT AND INTERESTED PARTY.....

JUDGE.