



IN THE COURT OF APPEAL

AT NAIROBI

CORAM: KARANJA, JA. (IN CHAMBERS)

CIVIL APPEAL (APPLICATION) NO. 288 OF 2017

BETWEEN

1. N.P.G. WARREN

2. D.J.C. MCVICKER

3. L.W. MURIUKI

4. KHW KEITH

5. Z.H.A. ALIBHAI

6. RUBINA DAR

7. A. BHANDARI

8. S. RAVAL T/A DALY FIGGIS ADVOCATES...APPLICANTS

AND

CHRISTOPHER MUSYOKA MUSAU.....RESPONDENT

(An Application for extension of time to file and serve a Supplementary Record of Appeal, out of time in an Appeal from the Judgment and decree of the High Court of Kenya at Nairobi (G. V. Odunga, J.) dated 20th September, 2012 *in HCCC NO. 1100 OF 2003*)

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**RULING**

Daly and Inamdar, acting on behalf of the applicants herein filed the Notice of Motion dated 30th January, 2020, seeking in the main an order as follows:-

**“1. That this Honourable Court be pleased to grant an extension of time for such period as this Court may deem fit and proper for the applicants to lodge and serve a Supplementary Record of Appeal against the judgment and decree of Mr. Justice Odunga dated 20th September, 2012 in HCCC No. 1100 of 2003 (OS) as reinstated by the Court of Appeal in its judgment dated 12th May, 2012 in Civil Appeal No. 290 of 2015.”**

The application was therefore predicated on the fact that there was in existence a pending appeal namely **Civil Appeal No. 288 of 2017**, with the record of appeal in place, but which record was incomplete and needed to be supplemented with the documents sought to be included in a supplementary record of appeal.

The Notice of Motion was supposed to be heard by way of Video Link on 19th November, 2020. As I was considering the same for purposes of preparing a Ruling, it was brought to my attention that Civil Appeal No. 288 of 2017 was struck out vide a Ruling rendered on 20th November, 2020. In the said Ruling, the Court pronounced itself as follows:-

**“1. Application dated 18th December, 2019 is allowed.**

**2. Costs of the application to the applicant.**

**3. The record of appeal dated 16th August, 2017 and filed in court on the same dated is accordingly found incompetent and therefore struck out.** (Emphasis mine)

This inevitably means that the substratum of the application at hand has vanished and this application has been left with no legs to stand on. A supplementary record of appeal presupposes the existence of a record of appeal. Once the record of appeal is struck out, then there cannot be need to file a supplementary record of appeal. For the foregoing reasons, my finding is that this application has been overtaken by events. The same is dismissed with no order as to costs.

**Dated and delivered at Nairobi this 18th day of December, 2020.**

**W. KARANJA**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

*Signed*

**DEPUTY REGISTRAR**