



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: WAKI, MAKHANDIA & ODEK, J.J.A)

CIVIL APPEAL NO. 262 OF 2010

BETWEEN

AA.....APPELLANT

AND

MH.....RESPONDENT

(Being an appeal from the ruling and order of the High Court of Kenya

at Nairobi (*Rawal, J*) dated 29th January, 2009

in Divorce Cause No. 7 of 2004)

JUDGMENT OF THE COURT

The parties in this appeal were a couple. However, their marriage was dissolved by the High Court on 12th July, 2017. The parties thereafter filed a consent in respect of maintenance and division of matrimonial properties. The consent was subsequently adopted as an order of the court.

On 1st November 2007 the appellant filed a notice of motion seeking to review the extracted Decree Nisi and the consent order. The appellant also sought an alternative prayer for stay of the implementation of the terms of the consent order until certain pre-requisites were performed by the respondent. The ruling on the application was delivered on 29th January 2009, by Rawal, J (as she then was) and was to the effect that;

“(i) The implementation of each and every term of the consent be and is hereby stayed until and unless the respondent complies with the pre-requisite to give effect to the consent equitably, fairly and justly to both parties.

ii. The respondent or in her failure, the petitioner do comply with all requisites to give effect to the consent order by disclosing all material facts, pertinent to both parties within 21 days.”

It appears the appellant was not happy with the above results and desired to appeal. This Court’s jurisdiction in respect of the appeal was invoked through a notice of appeal dated 12th February 2009. From the notice, it is apparent that the appellant intended to appeal against the aforesaid ruling. Pursuant to the notice, the appellant filed its memorandum of appeal dated 4th October 2010 with 8 grounds of appeal. A reading of the memorandum however reveals one pertinent issue. The grounds listed were prepared in respect of a ruling dated 21st January 2009 and delivered by the same court. Yet, the record of the High Court does not have a decision delivered on 21st January 2009. As a result therefore, the grounds of appeal are completely off tangent as they have nothing to do the issues determined in the ruling dated 29th January 2009.

As submitted by the respondent in her written submissions dated 2nd November 2018, there is absolutely no nexus between the ruling of 29th January 2009 and the grounds of appeal.

The appellant did not comply with Court’s directions to file written submissions. However, he was represented by counsel during the hearing of the appeal who submitted that he was hamstrung or unable to proceed with the appeal. Accordingly, he never prosecuted the appeal.

It is not clear to us at all the basis of the appellant's appeal because for all intents and purposes, the ruling of 29th January, 2009 was in his favour. Obviously, the appeal is incompetent as it discloses no grievance, and is accordingly dismissed with costs to the respondent.

Dated and delivered at Nairobi this 8th day of February, 2019.

P. N. WAKI

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JUDGE OF APPEAL

ASIKE-MAKHANDIA

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JUDGE OF APPEAL

J. OTIENO ODEK (Prof.)

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR