



IN THE COURT OF APPEAL

AT KISUMU

(CORAM: OTIENO ODEK, (IN CHAMBERS))

CIVIL APPLICATION NO. 71 OF 2017

BETWEEN

SOLOMON OUKO ONYANGO.....APPLICANT

VERSUS

AMEDO CENTRE (K) LIMITED.....RESPONDENT

(An application for extension of time to file notice of appeal and record of appeal out of time from a ruling and order of the High Court of Kenya at Kisumu, (Hon. Majanja, J) dated 10th April, 2017

in

CIVIL APPEAL NO. 24 OF 2016)

RULING

Before me is an application for extension of time to file a Notice of Appeal and Record of Appeal out of time. The applicant is Mr. Solomon Onyango Ouko who filed the application in person. The application by way of Notice of Motion is dated 27th July, 2017 and filed on the same date. The applicant gave his contact address as Kibuye Market Telephone No. 0711180147.

The application came up for hearing for the first time on 8th October, 2018. The application was not heard because the applicant could not be traced for service of the hearing notice. He also failed to answer telephone calls on the cell phone number that he has given as his contact telephone number.

The application was listed for hearing for the second time on 19th February, 2019. Once again, the application was not heard as the applicant could not be traced for service of the hearing notice.

On 20th May, 2019, once again for the third time, the application was listed for hearing. The applicant had not been traced for purposes of service of the hearing notice.

Today on 19th June, 2019, the application has again been listed for hearing, the applicant has not been served with the hearing notice. This is the fourth time the instant application is being listed for hearing.

In all the four occasions in which this matter has been listed for hearing, the applicant has never been traced to be served with the hearing notice. In three out of the four occasions when the matter was listed for hearing, counsel for the respondent was present.

Today, the respondent has urged this Court to dismiss the instant application for want of diligence and non-prosecution by the applicant. I have pondered and agonized whether the instant application can be dismissed for non-attendance when the hearing notice was not served upon the applicant.

Procedurally, an application or suit can be dismissed for non-attendance only when the hearing notice was served upon a party. In the instant matter, the applicant has never adequately and sufficiently been served with the hearing notice.

Notwithstanding the foregoing, I note that the applicant filed the present application on 27th July, 2017. It is now almost two years down the line and the application has not been prosecuted.

Further, the applicant gave this Court his contact address as Kibuye Market in Kisumu and Telephone contact as 0711180147. Numerous efforts have been made without success to reach and serve the applicant through the telephone contact that he gave.

It is my considered view that a party is duty bound to give a reliable and effective contact address for purposes of service of pleadings and or any court processes. In the instant matter, the applicant has failed to give a reliable and effective contact address. The practical effect of failure by the applicant to give a reliable address of service is that precious judicial time has and is being wasted in trying to trace the applicant for purposes of service. It is incumbent upon a litigant to constantly monitor and pursue the prosecution of his/her application, suit or appeal before a court of law. In this matter, the applicant has not been heard of, he has made no effort to prosecute the instant application or to find out what happened to it. The continued existence of the present application in the court system is simply to clog the wheels of justice and create an unnecessary backlog.

For this reason, the order that commends itself to me is to dismiss the instant application and order the same to be struck off. I hereby order and direct that Civil Application No. 71 of 2017 be and is hereby dismissed and struck off the record. The applicant shall be at liberty to make an application for re-instatement.

The costs of this application be and is hereby awarded to the Respondent. It is so ordered.

Dated at Kisumu this 19th June, 2019.

OTIENO ODEK

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR