



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT

AT KITALE

ELC APPEAL NO. 6 OF 2019

LYDIA NJERI KIPROP.....APPELLANT

VERSUS

GEOFFREY PKITE MOSOL....RESPONDENT

RULING

1. By a notice of motion dated **10/9/2020** and filed on **11/9/2020** brought under **Sections 80** of the **Civil Procedure Act, Order 45 Rule 1** of the **Civil Procedure Rules**. The appellant/applicant seeks the following orders:-

- 1. That this application be certified urgent to be heard *ex-parte* in the first instance.**
- 2. That this honourable court be pleased to review its judgment and order of 4th September, 2020.**
- 3. Costs be provided for.**

2. The application is supported by affidavit of the appellant's counsel sworn on **10/9/2020**. The application is grounded on the following grounds: that the appellant's appeal was dismissed for want of prosecution; that the appellant filed her submissions to the appeal on **20th April, 2020** and that it is necessary and in the interest of justice that the orders sought be granted.

Submissions

3. The court directed that the appeal be disposed of by way of written submissions. The appellant filed her written submissions on **20/10/2020**. The respondent did not file any submissions.

Determination

4. The issue that arises in the instant application is whether there is sufficient evidence to warrant the review of the judgment on record.

5. I have considered that the application is unopposed. I have also called for the record of the electronic mail communications concerning the filing of submissions and found that an email forwarding a soft copy of the submissions was sent to the court's email address on **24/4/2020** at **11:46 am** and acknowledged by the court on the same date at **12:00 pm**. There is however no explanation to date why the said submissions never reached the court file.

6. I am persuaded that there is good ground to set aside the judgment entered on **4/9/2020** in this matter. I hereby set aside the said judgment and I hereby order that the appeal shall be determined on its merits on the basis of the appellant's submissions whose copy has been availed to court in support of the application dated **10/9/2020** and the respondent's submissions dated **3/6/2020** which are in the record. By virtue of this ruling the application dated **7/7/2020** seeking costs of the appeal is deemed as overtaken by events and is therefore marked as dispensed with. This appeal shall be mentioned on **27/1/2021** for further directions.

It is so ordered.

Dated, signed and delivered at Kitale via electronic mail on this 17th day of December, 2020.

MWANGI NJORGE

JUDGE, ELC, KITALE.



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