



Gakua-Ku Investments Limited v EMO (Minor suing through his friend & next friend COM) (Civil Appeal E005 of 2023) [2024] KEHC 7629 (KLR) (25 June 2024) (Ruling)

Neutral citation: [2024] KEHC 7629 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL APPEAL E005 OF 2023**

JM OMIDO, J

JUNE 25, 2024

BETWEEN

GAKUA-KU INVESTMENTS LIMITED APPELLANT

AND

**EMO (MINOR SUING THROUGH HIS FRIEND & NEXT FRIEND
COM) RESPONDENT**

(Being an Appeal from the Judgement and Decree of Hon. S. N. Muchungi, Senior Resident Magistrate delivered on 9th December, 2022 in Milimani Commercial Courts CMCC No. 2207 of 2017)

RULING

1. This appeal emanates from the judgement and decree of Hon. S. N. Muchungi, Senior Resident Magistrate delivered on 9th December, 2022 in Milimani Commercial Courts CMCC No. 2207 of 2017.
2. The grounds of appeal presented by the Appellants vide the Memorandum of Appeal 10th June, 2022, upon which they seek to upset the judgement and decree of the lower court are as follows:
 - i. The learned Magistrate in the matter herein delivered Judgement on 9th December, 2022 in favour of the Respondent herein thus contrary to the law and facts availing before the Honourable Court.
 - ii. The learned Magistrate erred in fact and law in finding that the Minor herein was entitled to damages of Ksh.2,437,318.70/- for injuries sustained by the Plaintiff that were too high in view of the fact that compared (sic) to the injuries suffered by the Respondent.



- iii. The learned Magistrate erred in law and fact in failing to appreciate the long established principle of stare decisis, precedent law thus bringing law into confusion (sic) and thereby deriving an erroneous finding/conclusion, in particular relating to damages.
 - iv. The learned Magistrate erred in law and fact by failing to appreciate that the Respondent's pleadings and the evidence tendered in support thereof was incapable of sustaining the award of damages.
 - v. The learned Magistrate erred in law and fact in entering judgement in favour of the Respondent against the Appellant in spite of the Respondent's miserable failure to establish his case.
3. On 12th April, 2024, the Court directed that the appeal proceeds by way of written submissions and gave the parties herein timelines for filing their respective submissions. In particular, the Appellant was given 21 days to file and serve its submissions and the Respondent 21 days from the date of receipt of the Appellant's submissions, to file his rejoinder.
 4. The Respondent duly complied and filed his submissions. The Appellant did not file submissions. No reasons are on record as to why the Appellant failed to comply with the orders of the court.
 5. What then is the fate of this appeal? I will borrow from case law where the court (Mwangi Njoroge, J.) in the case of *Stephen Muthamia Marete & 2 others v Mary Naitore Kinyua (enjoined as the legal representative of the Estate of Patrick Kinyua Iringo)* [2018] eKLR, faced with a similar situation where an Appellant failed to file submissions in support of an appeal, observed and held as follows:

“In my view, when an Appellant has been ordered to file written submissions and he fails to do so as the Appellants have done in this case, the court should find, as it does in this case, that the appellant has failed to prosecute his appeal, or is no longer interested in pursuing it.”
 6. The court concluded as follows:

“I find that the Appellants have failed to prosecute their appeal. I hereby dismiss the appeal with costs for want of prosecution.”
 7. In the obtaining situation, I have no doubt that the Appellants has to date failed to prosecute its appeal and the only available avenue, in the circumstances, is to dismiss the same for want of prosecution, which I hereby do, with costs to the Respondent.

DELIVERED (VIRTUALLY), DATED & SIGNED THIS 25TH DAY OF JUNE, 2024.

JOE M. OMIDO

JUDGE

For Appellant: No appearance.

For Respondent: No appearance.

Court Assistant: Ms. Njoroge.

