



REPUBLIC OF KENYA



**Tamar Agencies & another v Musyimi (Civil Appeal E209 of 2023)
[2024] KEHC 13203 (KLR) (29 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13203 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E209 OF 2023
RE ABURILI, J
OCTOBER 29, 2024**

BETWEEN

TAMAR AGENCIES 1ST APPELLANT

JOHNSON GICHURU WACHIRA 2ND APPELLANT

AND

JAMES MWENDWA MUSYIMI RESPONDENT

*(An appeal arising out of the Judgment & Decree of the Honourable G. C. Serem
(RM) in Kisumu Civil Suit No. 284 of 2021 delivered on 17th June 2023)*

RULING

1. I have perused the application dated October 25, 2024 filed under certificate of urgency. I find no urgency involved. I decline to certify it as urgent.
2. Nonetheless, on its merit, I observe that the appeal was struck out on 18th October 2024 for want of evidence of extension of time to file it out of time. The appellant never annexed the order extending time.
3. I have perused the affidavit by counsel for the Applicant wherein she annexed the order extending time for filing of the appeal out of time issued on 19th December 2023 by Lady Justice M. S. Shariff in Kisumu HC Misc. Civil Application No. E173 of 2023.
4. The order No. 2 allowed the Applicant to file the Memorandum of Appeal and serve within 7 days of that date. The Memorandum of Appeal was filed on 20th December 2023 in this matter, which was within the period extended.
5. Accordingly, I find the application for setting aside the order striking out the appeal is merited as the same has been file timeously.



6. I vacate the order striking out the appeal and reinstate the appeal for consideration on merit.
7. Any other order that was issued in HC Misc. Civil Application No. E173 of 2023 and was complied with is hereby restored.
8. As there were no other application made in this matter, I would not reissue any other orders on stay.
9. As the lower court file is available, I hereby admit this appeal to hearing and direct the appellant to file and serve written submissions within 14 days of today upon which the Respondent shall have 14 days of date of service to file and serve written submissions.
10. Mention on November 28, 2024 to fix a Judgment date.
11. I make no orders as to costs of the application.
12. I so order. Ruling to be typed and uploaded.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 29TH DAY OF OCTOBER, 2024

R.E. ABURILI

JUDGE

