



**Mwananchi Limited v Kipsang (Civil Appeal E073 of 2023)
[2023] KEHC 22951 (KLR) (26 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22951 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E073 OF 2023
RE ABURILI, J
SEPTEMBER 26, 2023**

BETWEEN

MWANANCHI LIMITED APPELLANT

AND

BENJAMIN NGETICH KIPSANG RESPONDENT

RULING

1. One of the administrative requirements for advocates and parties acting pro se as they file pleadings in court is that they are expected to supply the court with their email addresses as well as telephone contacts so that when the court wishes to access counsel or parties acting in person with information, it will do so expeditiously. In this case, Mwaka & Company Advocates who filed the appeal and application on May 20, 2023 before the e-filing system was initiated, never provided their email or telephone contacts.
2. It is therefore impossible for the court to reach them with any directions for compliance.
3. They filed an application dated May 23, 2023 under Certificate of urgency which application was certified as urgent.
4. On May 25, 2023, directions were given that they serve the Respondents forthwith for interpartes directions on May 29, 2023. On May 29, 2023, Mr. Mwaka Advocate appeared for the applicant/appellant while Mr. Ombego Advocate appeared for the Respondent and directions were sought on the urgent application as the matter in the lower court was due for Notice to Show cause on September 30, 2023.
5. Mr. Ombego submitted that as they had been served on a Friday, they sought for two days to file a response.



6. The court gave directions for the filing of a replying affidavit, further affidavit as well as supplementary affidavit and written submissions to canvass the application filed under certificate of urgency and fixed the matter for mention on June 16, 2023 to confirm compliance and to fix a ruling date.
7. A temporary stay of NTSC proceedings pending in the trial court was granted until June 16, 2023. On the latter date, none of the parties appeared and that was because it fell on the date of the e-filing launch by the Chief Justice.
8. However, the file was recalled earlier on June 15, 2023 and directions given and interim orders issued on May 29, 2023 were extended until June 20, 2023.
9. I directed the Registry to notify the parties to attend court for mention for further directions on June 20, 2023.
10. On June 20, 2023, both parties' counsel were present and the Respondent's counsel sought leave to file submissions. Mr. Mwaka had no objection so I granted extension until June 28, 2023 to fix a ruling date and extended the stay of Notice to Show Cause.
11. June 28, 2023 was gazetted as a public holiday hence the matter was mentioned on June 29, 2023 and on the latter date, none of the parties appeared whether virtually or physically. I granted the parties more time to comply with the earlier directions and fixed the matter for Ruling on September 26, 2023.
12. The Registry were unable to reach the applicant's counsel as there are no telephone or email contacts for them to be reached by the court.
13. The court or Respondent cannot prosecute the application filed by the applicant/appellant who came to court under certificate of urgency. As at now when I am writing this 'ruling', the applicant has not filed submissions to canvass the application filed way back in May 2023. The court cannot be an archive for parties' pleadings.
14. The requirements under Order 1 Rule 26 of the [Civil Procedure Rules](#) which are couched in Mandatory terms were meant to facilitate expedition where the court wishes to reach the parties on a matter before it as courts no longer wait for parties to move the court. Courts move themselves and the parties, ensuring that all cases pending are activated, even where parties have gone to slumber.
15. The above provisions mandate parties filing pleadings to provide contact details which include postal address, telephone number, email address and physical address.
16. Many parties take this requirement for granted but courts take it very seriously as it is a case management tool for expedition of justice and information dissemination to court users. In addition, with the Civil Procedure Rules as amended in 2020 providing for electronic service as well as service by mobile phones, the provision of email address and mobile phone becomes mandatory even for the adverse parties to serve each other with court processes.
17. The court is also enabled to communicate easily with the parties in instances like when issuing notices for rulings, judgments, hearings or mentions on short notices.
18. Where a party fails to comply with the above Rules, they cannot blame the court for not reaching out to them.
19. In this case, I kept issuing directions for the Registry to notify the applicant's counsel where the advocate failed to appear in court but the feedback is that the advocates cannot be reached.



20. Parties are expected to comply not only with the procedural Rules of the court, but also directions of the court as issued. In short, the applicant has to date not filed written submissions to prosecute its application filed under certificate of urgency and has been enjoying stay of Notice to Show Cause orders issued by the court. That is unacceptable as parties ought to be actively involved in the prosecution of their cases and not for the courts to prosecute for them their matters.
21. For the above reasons, I hereby dismiss the appellant/applicant's application dated May 23, 2023 for non-prosecution of the same with no orders as to costs as the Respondent could not have filed submissions to defend a matter which was not prosecuted in the first instance.
22. The Deputy Registrar to call for the lower court file for consideration of the appeal for admission and directions. Mention of the main appeal shall be on October 31, 2023 before the Deputy Registrar to confirm availability of the lower court file.
23. The interim orders of stay of Notice to Show Cause (NTSC) proceedings given are hereby discharged and vacated.
24. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 26TH DAY OF SEPTEMBER, 2023

R.E. ABURILI

JUDGE

