



**Gichuru v Karwitha & 2 others (Miscellaneous Civil Case E071 of 2023)  
[2023] KEHC 26214 (KLR) (30 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 26214 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
MISCELLANEOUS CIVIL CASE E071 OF 2023  
TW CHERERE, J  
NOVEMBER 30, 2023**

**BETWEEN**

**DAVID MUTUMA GICHURU ..... APPELLANT**

**AND**

**MARY KARWITHA ..... 1<sup>ST</sup> RESPONDENT**

**EVANS MUTETHIA ..... 2<sup>ND</sup> RESPONDENT**

**HELLEN KINANU M'RUTERE (SUING AS LEGAL REPRESENTATIVE  
TO THE ESTATE OF BARTHOLOMEW KATHURIMA**

**RUTERE) ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. By judgment dated March 31, 2023, the court in Githongo MCC No. 25 Of 2022 entered judgment for the Respondents for KES. 2,210,876/- being damages for suffered by Bartholomew Kathurima Rutere who was fatally injured after he was knocked down by Applicant's M/V KCS 172G on 08<sup>th</sup> November, 2020.
2. By a notice of motion dated and filed on July 7, 2023, Applicant seeks leave to appeal out of time on the grounds that he is aggrieved by the judgment dated March 31, 2023, he intends to file an appeal which has high chances of success, his goods have been proclaimed and that he expected his insurer Invesco Assurance to file an appeal on his behalf but they did not.
3. Respondents opposed the application by way of a replying affidavit sworn by the 1<sup>st</sup> Respondent on the ground that an application dated July 7, 2023 which is similar to this one was heard and dismissed by the trial court on October 23, 2023 and that Applicant has moved the court with inordinate delay and further that having failed to defend the suit, Applicant cannot be said to have an arguable appeal.



## **Analysis and determination**

4. I have considered the application in the light of the affidavits on record. There is no communication between the Applicant and his insurer after the judgment and Applicant having slept on his rights has not explained the delay in filing the appeal to the satisfaction of the court.
5. However, it should be the court's last resort to deny a party a chance to be heard. The overriding objective of the *Civil Procedure Rules* is to facilitate the just, expeditious, proportionate and affordable resolution of disputes. Judicial authority to do justice to all, vested on this court by article 159 of the *Constitution* cannot be said and be seen to be exercised if the courts were to deny a party a chance to be heard on merit.
6. The foregoing notwithstanding, there is no denying that Respondent has judgment in his favor which has remained unsatisfied since March 31, 2023 through the fault of the Respondent.
7. Consequently, the notice of motion dated and filed on July 7, 2023 is allowed in the following terms:
  - 1) There shall be a stay of execution of the judgment in Githongo MCC No. 25 of 2022 pending the hearing and determination of the intended appeal upon the Applicant depositing with the court  $\frac{1}{2}$  of the decretal sum within 14 days from today's date in default of which the stay will lapse
  - 2) Applicant shall file and serve the intended appeal within 45 days from today's date
  - 3) Costs shall abide the outcome of the intended appeal

**DELIVERED IN MERU THIS 30<sup>TH</sup> DAY OF NOVEMBER 2023**

**WAMAE. T. W. CHERERE**

**JUDGE**

### **Appearances**

Court Assistants - Kinoti/Munene

For Applicant - Mr. Karatu for Kuria Karatu & Co. Advocates

For Respondents - Mr. Kaimenyi for Kaimenyi Kithinji & Co. Advocates

