



REPUBLIC OF KENYA



**KENYA LAW**  
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**Sasah General Merchants Ltd & another v Ouma (Civil Appeal  
22 of 2020) [2022] KEHC 2985 (KLR) (22 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 2985 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
CIVIL APPEAL 22 OF 2020**

**KW KIARIE, J  
JUNE 22, 2022**

**BETWEEN**

**SASAH GENERAL MERCHANTS LTD ..... 1<sup>ST</sup> APPLICANT**

**SAMWEL ODHIAMBO AKUMU ..... 2<sup>ND</sup> APPLICANT**

**AND**

**CAREN ACHIENG OUMA ..... RESPONDENT**

**RULING**

1. The appellants/applicants moved the court by way of Notice of Motion dated 10<sup>th</sup> January, 2022. The application is brought under sections 1A, 1B & 3A,63 & 95 of the *Civil Procedure Act*, Order 17 Rule 2(3), Order 42 Rule 21, Order 51 Rule 6 *Civil Procedure Rules*, Articles 22 (1), 27 (1), 47, 48, 50, 159 (2), 165 & 258 of *the Constitution* of Kenya. The applicants are seeking the following orders:
  - a. That the matter be certified urgent and be heard in the first instance and/or on priority basis. [Spent]
  - b. That this court be pleased to set aside the orders dated and made on 9<sup>th</sup> November, 2021.
  - c. That the applicants' appeal be reinstated for hearing and disposal on merits.
  - d. That costs be in the cause.
2. The application is premised on grounds
  - a. That the applicants were not served with the notice to show cause why the suit ought not to be dismissed.
  - b. That the appeal has taken long to set down for hearing due to non-supply of typed proceedings.
3. The application was opposed by the respondent who contended that the application lacks merit.



4. I have checked the record and though the notice to show cause was issued, there was no return of service to indicate whether the appellants were served. For this reason I will vacate the orders of 9<sup>th</sup> November, 2021.
5. Though appellants/applicants have contended that they have failed to file the record of appeal for failure to be supplied with the typed proceedings, this position may not be correct. Our record show that the original file was forwarded to this court on 30<sup>th</sup> March, 2021 with typed proceedings. I will therefore give the appellant 14 days within which to file the record of appeal failure to do so, the respondent may be at liberty to move the court.
6. Costs be in the cause.

**DELIVERED AND SIGNED AT HOMA BAY THIS 22ND DAY OF JUNE, 2022**

**KIARIE WAWERU KIARIE**

**JUDGE**

