



REPUBLIC OF KENYA



KENYA LAW
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**Lovoni v Nyabola (Civil Appeal E028 of 2024)
[2025] KEHC 2045 (KLR) (21 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2045 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CIVIL APPEAL E028 OF 2024
WM MUSYOKA, J
FEBRUARY 21, 2025**

BETWEEN

BEATRICE LOVONI APPELLANT

AND

PAUL IKWARAS NYABOLA RESPONDENT

(arising from decision and ruling of Hon. Edna Ameyo Asachi Nyaloti, Chief Magistrate, CM, delivered on 11th June 2024, in Busia CMCCC No. E084 of 2024)

RULING

1. The appeal herein was admitted on 20th September 2024. Directions on its disposal were taken on 14th October 2024, for canvassing by way of written submissions. It was slated for mention on 9th December 2024, to receive written submissions, but that mention did not happen, as the Judge did not sit, and the matter was placed before the Deputy Registrar, who allocated 10th February 2025, as the date for mention.
2. On 10th February 2025, Mr. Okeyo, for the respondent, indicated that the respondent was conceding the appeal, as he was acknowledging that there was a mistake made by the trial court. He pleaded that as the appeal arose from a mistake of the court, the respondent ought not be condemned to pay the costs.
3. Mr. Kabele, for the appellant, stated that the appellant was entitled to costs, given that she had served the memorandum of appeal, arguing that if the respondent was serious in supporting the appeal, he should have conceded earlier.
4. I will start with the concession. As the appeal herein is conceded by the respondent, I shall allow it, with the consequence that the Motion, in Busia CMCCC No. E084 of 2024, dated 2nd April 2024, is allowed in terms of prayers 2 and 3, thereof.



5. The only contest is on costs. I note that directions on the disposal of the appeal were given, after which the appellant did file detailed written submissions, running into 9 pages, supported by 5 judicial authorities, full copies of which were filed in court, simultaneously with the appellant's list of authorities, dated 22nd October 2024.
6. The respondent did not file written submissions, instead, when the matter came up to confirm filing of written submissions, he conceded the appeal, as narrated in paragraph 2, hereabove.
7. Should the respondent have conceded the appeal earlier? There are no rules on when an appeal ought to be conceded.
8. Order 42 Rule 16 of the Civil Procedure Rules may provide some guidance on should happen. It is about filing of written submissions, and it states that a party who does not wish to attend court, for the purpose of the hearing of the appeal, may file a document indicating so, simultaneously with his written submissions, either in support or opposition to the appeal. It further provides that a party who has filed written submissions may address the court, at the hearing of the appeal, with the leave of court.
9. My understanding of Order 42 Rule 16 is that the issue as to whether the appeal is conceded could be stated at the time of filing written submissions, or at the hearing of the appeal. I also note that Order 42 Rule 35 provides that consideration as to whether an appeal ought to be dismissed, for want of prosecution, is to be made after directions have been given. The appropriate time, therefore, for stating a substantive position on the appeal can only at this time, either at the point directions are taken, or, thereafter, at the hearing of the appeal.
10. The above being the case, it was not too late for Mr. Okeyo to indicate the appellant's concession, when the matter came up for mention, to confirm filing of submissions, for technically that was when the appeal was up for hearing. Indeed, Mr. Okeyo mad the concession just ta the right time. I take it that when he settled down to write his submissions, he must have realised that the appeal was merited, and saw no need to oppose it.
11. An early concession of a matter is always an incentive for the court to exercise discretion not to impose costs, for an early concession saves time for everyone. Consequently, I hereby exercise discretion in favour of the respondent, and order that each party to bear its own costs. The appeal herein is disposed of in the terms of paragraphs 4 and 11 hereof.
12. The trial records shall be returned to the trial court, for the purpose of the hearing and final disposal of the suit in Busia CMCCC No. E084 of 2024. This appeal file shall be closed. Orders accordingly.

DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 21ST DAY OF FEBRUARY 2025.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Kabele, instructed by Angano & Ratemo, Advocates for the appellant.

Mr. Okeyo, instructed by Okeyo Ochiel & Company, Advocates for the respondent.

