



REPUBLIC OF KENYA



**Saad v Saad (Civil Appeal E143 of 2024) [2025] KEHC 6145 (KLR) (7 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 6145 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL APPEAL E143 OF 2024**

**JM OMIDO, J**

**APRIL 7, 2025**

**BETWEEN**

**ABDALLA AHMED SAAD ..... APPELLANT**

**AND**

**AHMED ABDALLAH AHMED SAAD ..... RESPONDENT**

**RULING**

1. The substantive prayer sought in the Appellant's Notice of Motion dated 25<sup>th</sup> November, 2024 is for the review and/or setting aside of the order of 3<sup>rd</sup> October, 2024 that resulted in the dismissal of the Appellant's appeal.
2. The application is supported by the Appellant's affidavit of even date.
3. Although the Respondent does not resist the application, this court is under duty to consider whether the Appellant has presented sufficient grounds for the order sought to be granted, in the wake of the fact that the appeal was dismissed upon failure by the Appellant to comply with the orders of the court requiring that submissions on the appeal be filed within given timelines.
4. In his affidavit, the Appellant states that the failure to comply with the order was as a result of fault on the part of his erstwhile Advocate and that the mistake of his said Counsel should not be visited upon the Appellant. The Appellant states that he did not contribute to the mistake as he had no control, having properly instructed his Counsel. The Appellant has since engaged a different firm of Advocates.
5. I have considered the application and the record. The order sought is a discretionary one. Discretion must however be exercised judiciously.
6. Noting that the Appellant duly filed the Record of Appeal timeously as ordered by the court and only failed in filing his submissions within the timelines that were given, and considering further that the application is not opposed, I will exercise my discretion and allow the application in the following terms:



- a. The self-executing order that resulted in the appeal herein being dismissed is hereby reviewed and the appeal is reinstated.
- b. The Appellant shall file and serve upon the Respondent submissions on the appeal within 21 days from the date hereof.
- c. The Respondent shall file and serve upon the Appellant submissions on the appeal within 21 days from the date of receipt of the Appellant's submissions.
- d. In the event of non-compliance by the Appellant of (b) above, the application dated 25<sup>th</sup> November, 2024 shall be deemed to have been dismissed effective the date of delivery of this ruling.
- e. This matter shall be mentioned on 30<sup>th</sup> July, 2025 for further directions.
- f. I make no order as to the costs of the application.

**DELIVERED (VIRTUALLY), DATED & SIGNED THIS 7<sup>TH</sup> DAY OF APRIL, 2025.**

**JOE M. OMIDO**

**JUDGE**

For Appellant: Ms. omollo Achieng'.

For Respondent: No Appearance.

Court Assistant: Mr. Juma & Mr. Ngoge.

