



REPUBLIC OF KENYA



KENYA LAW
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Tumaz and Tumaz Enterprises Limited & 2 others v Glory Car Hire Tours & Safaris Msa Limited (Civil Appeal E224 of 2021) [2025] KEHC 12078 (KLR) (3 April 2025) (Judgment)

Neutral citation: [2025] KEHC 12078 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL E224 OF 2021**

F WANGARI, J

APRIL 3, 2025

BETWEEN

TUMAZ AND TUMAZ ENTERPRISES LIMITED 1ST APPELLANT

JULIUS MWALE 2ND APPELLANT

PHILIP DANIEL KNOX 3RD APPELLANT

AND

GLORY CAR HIRE TOURS & SAFARIS MSA LIMITED RESPONDENT

*(Being an appeal against the Ruling and Order of Hon.
F.N. Kyambia, CM in Mombasa CMCC No. 2417 of 2018)*

JUDGMENT

1. The Appellants filed this appeal against the above mentioned ruling through the Memorandum of Appeal dated 22/11/2021. The Appellants sought to have the said ruling and consequent orders be set aside, and the appeal be allowed.
2. Filed together with the Memorandum of Appeal, the Appellants filed the Notice of Motion dated 22/11/2021 seeking for stay of execution of judgment dated 16/04/2021, where the application was dismissed for lack of merits via the ruling dated 01/11/2022.
3. Save for the above pleadings filed by the Appellants, no other pleading was filed. There is no Record of Appeal on record. The Appellants last appeared in court on 01/11/2022 when the ruling on the application dated 22/11/2022 was delivered.
4. The matter was mentioned severally in court in the absence of the parties for a period of over two (2) years. It is not until 20/01/25 when the matter was mentioned before Hon. Justice Ngaah where the Respondents' counsel was present, and the matter was fixed before this court for directions on 17/02/2025.



5. On 17/02/2025, only the Respondents' counsel appeared. It was stated that both parties had filed their submissions and a date for judgment being 03/04/2025 was issued. I have perused through the court proceedings. No directions had been issued as to the filing of the submissions.
6. I have noted from the e-filing platform a letter by the Respondents counsel to the High Court Deputy Registrar dated 24/03/2025 seeking for a mention date for purposes of directions pursuant to the judgment of the lower court in the matter, which is dated 13/03/2025 and which was attached to the letter.
7. This appeal was in respect to a ruling where the trial court declined to review a ruling where the court had declined to set aside an ex-parte judgment against the Appellants in the lower court. It is now clear as to why the Appellants never bothered to attend to this appeal as they must have been granted audience in the lower court going by the contents of the judgment.
8. The appeal is therefore overtaken by events, though it was a ripe case for dismissal under Order 17, Rule 2(5) of the Civil Procedure Rules.
9. The Respondents having participated in this appeal which has been abandoned by the Appellants, are entitled to costs.
10. In the upshot, I make the following orders: -
 - a. The Appeal has been overtaken by events by virtue of the lower court judgment dated 13/03/2025.
 - b. Costs of this appeal awarded to the Respondents.It is so ordered.

DATED, SIGNED AND DELIVERED AT MOMBASA ON 3RD DAY OF APRIL, 2025.

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F. WANGARI

JUDGE

In the presence of;

N/A by the Appellant

N/A by the Respondent

M/S Salwa, Court Assistant

