



**Ayoti Distributors Limited v Ochieng (Civil Appeal E093 of 2021)
[2024] KEHC 1510 (KLR) (14 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1510 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E093 OF 2021
RE ABURILI, J
FEBRUARY 14, 2024**

BETWEEN

AYOTI DISTRIBUTORS LIMITED APPELLANT

AND

FLORENCE AUMA OCHIENG RESPONDENT

RULING

1. I have considered the Appellant’s application dated 16th January 2024, the grounds and the supporting affidavit of Chris Maganga Advocate. I have also considered the oral submissions by the Appellant’s counsel on the reasons for non-compliance with the court’s directions made on 22nd November 2023 leading to the dismissal of the appeal on 21st December 2023 for non-compliance with the Court’s directions.
2. Albeit no opposing response has been filed, it is not in every case that the court will grant orders as prayed on account of non-opposition from the other party, especially where the party applying seeks for the exercise of the court’s discretion, which discretion must be exercised judiciously and not capriciously.
3. Parties are reminded that court directions or orders once issued are not papers but intended to be complied with for the better administration of justice and that non-compliance thereof attracts consequences which include dismissal of the proceedings.
4. Non-compliance with directions of the court as was with this case brings delay as the appeal has been pending since 5th August 2021 and therefore the question is, what do the parties want the court to do if they cannot take steps that will necessitate or facilitate the conclusion of cases.
5. “Mistake of advocates should not be visited on their clients” is a slogan often used by counsel in default. This is not acceptable going forward as the clients can seek for professional indemnity from their



negligent advocates, as that is the reason advocates in practice take out professional indemnity covers before they are licensed to practice each year.

6. Nonetheless, having heard the persuasive plea by the Appellant's counsel Miss Miheso, I hereby exercise discretion in this case and allow the prayer setting aside the order of 21st December 2023 dismissing the appeal herein for non-compliance with court directions issued on 22nd November 2023 and order that this appeal is forthwith reinstated for hearing on merit on condition that the Appellant files and serves written submissions as earlier directed within 3 days of today.
7. The Respondent will have 10 days of service to file and serve written submissions and in addition, all orders of stay issued in the appeal shall remain in force until the appeal is heard and determined on merit.
8. This Ruling shall apply to HCCA No. E094 of 2021 in equal measure and the Ruling to be typed and placed in the said file as well.
9. I make no orders as to costs.
10. Mention on 5th March 2024 to fix a Judgment date.
11. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 14TH DAY OF FEBRUARY, 2024

R. E. ABURILI

JUDGE

