



**Darson Trading Limited v Oketch (Civil Appeal E004 of 2023)
[2024] KEHC 1283 (KLR) (16 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1283 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CIVIL APPEAL E004 OF 2023
WM MUSYOKA, J
FEBRUARY 16, 2024**

BETWEEN

DARSON TRADING LIMITED APPELLANT

AND

DANIEL ONYANGO OKETCH RESPONDENT

(An appeal arising from orders made by Hon. PA Olengo, Senior Principal Magistrate, SPM, in Busia CMCCC No. 352 of 2021, on 17th February 2023)

RULING

1. The application for determination is dated October 24, 2023. It seeks reinstatement of an application, dated October 9, 2023, that had been dismissed for want of prosecution. The said application was dismissed on October 19, 2023. It is averred that the appellant had not been served by the court with a hearing notice, requiring it to attend court on October 19, 2023, and that the notification it had was for a hearing on October 24, 2023. It is averred that it was on October 24, 2023 that the appellant established that its application, dated October 9, 2023 had been dismissed on October 19, 2023. It is argued that the court has wide discretion to set aside its orders.
2. The respondent replied. He argues that it was the appellant who moved the court by the application, dated October 9, 2023, and it was incumbent upon it to follow up on what had happened to its matter. He avers that as the application was coming up for *inter partes* hearing on October 19, 2023, and the appellant did not attend court to prosecute it, the court was at liberty to dismiss the application.
3. The application was canvassed by way of written submissions.
4. This is one of those cases where parties blame the court, after they mess up their own cases. Litigation is driven by the parties, not the court, because the cases belong to the parties, not the court. A party who files process, and then goes to sleep, only to wake up and find that their case was dismissed for inaction, can only blame itself, and not the court. Perhaps I should be a little blunt, and refer more specifically



to Advocates, for it is them who file matters in court on behalf of their clients. It is not uncommon for some Advocates to fail to follow through with the directions given by the court, and they turn around and blame the court for their own mess, as a way cleansing themselves in the eyes of their clients. It is a most unfortunate circumstance.

5. The application, dated October 9, 2023, was filed under certificate of urgency, and was placed before the Judge, on October 12, 2023, for him to assess its urgency. The Judge evaluated it, and considered it urgent, and hence allocated it a very near date, October 19, 2023. That was informed by the fact that the Deputy Registrar had fixed a bill of costs for hearing on October 24, 2023, and the appellant, no doubt, by its application of October 9, 2023, wanted orders from the Judge which would have forestalled the taxation, hence the consideration that that application was urgent, and merited hearing before the taxation on October 24, 2023. It is the appellant who moved the court, under certificate of urgency, and it was the duty of the appellant to follow up, with the court registry, to find out the directions that the Judge might have made on the certificate. It is not the duty of the court to inform the parties about those directions. The appellant should have followed up. It moved the court for a certification of urgency, and the court acted on its certificate, but the appellant went to sleep and did not seek to find out what had become of its certificate.
6. The appellant suggests that the court had earlier given it, and notified it of a court attendance on October 24, 2023, but was not notified about October 19, 2023. The processes that were to happen on October 19, 2023 and October 24, 2023 were different. The October 19, 2023 date was for an appearance before the Judge, on an application, that had been filed under certificate. The October 24, 2023 was a date for taxation, not before the Judge, but before the Deputy Registrar. That date had been given by the Deputy Registrar on her own motion, that is without being moved by the parties, there was a duty to notify the parties, which was done. October 19, 2023 was given by the Judge, after being moved, under certificate by the appellant. There was no duty on the part of the court to notify the appellant of the directions given, on October 12, 2023. The party who had moved the court should have followed up with the registry, and more particularly with the Judge's court assistant.
7. This is an unfortunate case of laxity and indolence, I should say, with respect, on the part of the Advocate for the appellant, who should know these processes. He has no one to blame, save himself, for letting his client down, by not following up on his filings with diligence. If you move the court for a date or some order, then the court grants you your request, then you do not act as directed, you can only blame yourself.
8. Be that as it may. In the interests of justice, I shall allow the application, dated October 24, 2023, with costs to the respondent. I shall allocate a date for directions, at the delivery of this ruling. Orders accordingly.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 16TH DAY OF FEBRUARY 2024

WM MUSYOKA

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JUDGE

Appearances

Mr. Osoro, instructed by Osoro Juma & Company, Advocates for the appellant.

Mr. Okutta, instructed by Ouma-Okutta & Associates, Advocates for the respondent.

Mr. Arthur Etyang, Court Assistant.



I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

