



Gitonga & another v Ndungu & Nyambura (Suing as the Legal Representatives of the Estate of Duncan Irungu Njoroge) (Civil Appeal E131 of 2023) [2024] KEHC 8250 (KLR) (14 March 2024) (Ruling)

Neutral citation: [2024] KEHC 8250 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E131 OF 2023
DO CHEPKWONY, J
MARCH 14, 2024**

BETWEEN

NGANGA GITONGA 1ST APPELLANT

SIMBA COACH LIMITED T/A SIMBA POA LIMITED 2ND APPELLANT

AND

SUSAN WAIRIMU NDUNGU & ROSEMARY WANJIKI NYAMBURA (SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF DUNCAN IRUNGU NJOROGE) RESPONDENT

RULING

1. The court issued Notice to Show Cause why the Appeal should not be dismissed dated 13th July, 2023.
2. In response to the Notice to Show Cause, the Appellants filed Replying Affidavit which was sworn by their Counsel on record Wendy Nyambura Kariuki from the Firm of Ms. Kimondo Gachoka & Company Advocates on 11th December, 2023.
3. The Counsel avers that on 19th May, 2023, the Appeal and an application for stay of execution both dated 2nd May, 2023 were filed and on 24th May, 2023, the court made orders that the Respondents be served with the application within 7 days and in return they file their response within a further 7 days. The matter was then set for Mention on 5th June, 2023.
4. According to the counsel, on the said 5th June, 2023, the Counsel for the Appellant failed to appear in court due to an error in the firm's filing system as the matter did not appear in the Counsel's diary. She holds that the Respondents served them with Grounds of Opposition on 8th June, 2023.
5. The Counsel has gone on to state that they were not aware of new date issued and when they inquired from the Court's Registry, they were advised to check on the Judiciary Public Information Kiosk where



they found that the matter had a date of 21st November, 2023 and she later established that its purpose was for Notice to Show Cause why the Appeal should not be dismissed for want of prosecution.

6. The Appellant's Counsel explains that she has been unwell for some time and hence been in and out of the office between the months of June and December, 2023 and only went back to the office on 11th December, 2023. The Counsel contends that the court is yet to issue directions on the application and that the Appellant is ready and willing to prosecute the Appeal which is an arguable one with high chances of success. She has urged the court to allow the Appellant to prosecute the Appeal so that it can be heard and determined to its conclusion on merit.
7. The court has considered the response to the Notice to Show Cause and the explanation given therein, and appreciates that the same is satisfactory and it will be in the interest of justice to accord the Appellant a chance to prosecute the appeal. In view of this, the Notice to Show Cause is hereby set aside and the court proceeds to direct that:-
 - a. The parties to dispose of the appeal by way of written submissions.
 - b. The Appellants to file and serve their written submissions within twenty-one (21) days from the date hereof.
 - c. The Respondents are equally granted twenty-one (21) days corresponding leave to file and serve their written submissions upon being served with the Appellants' submissions.
 - d. Mention on 15th July, 2024 before the Deputy Registrar for parties to confirm compliance and take a date for Judgment.

It is so ordered.

RULING DATED AND SIGNED AT KIAMBU THIS 14TH DAY OF ...MARCH, 2024.

D. O. CHEPKWONY

JUDGE

