



**Kiteme v Kimanthi (Civil Appeal 61 of 2019) [2024] KEHC 2235 (KLR) (4 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2235 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITUI  
CIVIL APPEAL 61 OF 2019**

**RK LIMO, J  
MARCH 4, 2024**

**BETWEEN**

**VERONICA KITEME ..... APPELLANT**

**AND**

**IRENE KATUMBU KIMANTHI ..... RESPONDENT**

**RULING**

1. Irene Katumbu Kimanthi, the applicant herein has moved this court vide Notice of motion dated 23<sup>rd</sup> February, 2023 brought under Section 1A,1B, 3 & 3A of *Civil Procedure Act* and Order 42, Rule 6, 13, 20, 21, & 35 & order 51 Rule 1 of the *Civil Procedure Rules* and seeks the following reliefs:
  - i. That this honourable court reviews and sets aside the judgement dated 9<sup>th</sup> February 2023 and hear the appeal on merit.
  - ii. Costs.
2. The grounds raised by the applicant are that she filed her submissions via email but the same was never filed in court because the court file had been retained by court for purposes of writing a judgement.
3. That on the date of delivery of the judgement, the applicant could not file her submissions on the court file since the judgment had already been written.
4. That the submissions by the Applicant/Respondent was rejected leading to travesty of justice since she was not heard.
5. The grounds are supported by an affidavit of Moses Odawa, the Appellant’s counsel sworn on 3<sup>rd</sup> February, 2023. The Appellant’s counsel has simply reiterated the above grounds in the said appeal in support of this application. He has exhibited the copy of the belated submissions which have an interesting beginning titled “Asante ya punda ni mateke” which reminds this court about the famous song by the late Kelly Brown “Asante ya punda ni mateke.”



6. In her written submissions dated 18<sup>th</sup> September 2023, the Applicant/Respondent, the Applicant has delved much on the merits of appeal in Civil Appeal No. 64 of 2019 which this court has delved on and rendered itself. The Applicant appears to have gotten mixed up when filing the submissions because this court notes that she has also filed another set of submissions dated 14<sup>th</sup> July, 2023 where she has concentrated on the prayers sought in this application.
7. The Applicant submits that the time given to her to file submissions in the main appeal was relatively short to her which rendered her unable to comply with timelines set by this court. He prays for a consideration by this court contending that no prejudice will be occasioned to the Respondent.
8. The Respondent has opposed this application vide grounds of opposition dated 2<sup>nd</sup> March 2023. The Respondent contends that this application has no legal basis. She blames the Applicant for indolence adding that the responsibility of this court is to determine matters before it expeditiously in the interest of justice.
9. The court has considered this application and the response made. The Applicant seeks to set aside a judgement on appeal stating that she never got a chance to make her submissions.
10. The Applicant is asking this court to review its judgment dated 8<sup>th</sup> February, 2023 and set it aside on grounds that she was unable to place her submissions on the file. I have however looked at the record and I note that on 6<sup>th</sup> October, 2022 the Applicant expressed reluctance to proceed in this matter asking that she should be allowed to pursue her other appeal first. This court however over-ruled her and directed that the appeal do proceed on its merit. The parties were given upto 31<sup>st</sup> January, 2023 to put in their written submissions. The time given from 6<sup>th</sup> October 2022 to 31<sup>st</sup> January, 2023 was about three (3) months and three (3) weeks. On 31<sup>st</sup> January, 2023 the Applicant had not filed her submissions in the files and was absent in court.
11. The Respondent herein had duly filed her submissions and judgement date was given for 8<sup>th</sup> February 2023. On 8<sup>th</sup> February 2023, the Respondent had not been served with judgement notice and this court directed service to be effected and judgement was set for 9<sup>th</sup> February 2023 when the Applicant's attended and perhaps that is when she was jolted from her sleep. Perhaps that is why she is saying that the time given to her was relatively short but that is not factual as I have shown above.
12. Secondly and more importantly is that this court rendered itself in its judgement dated 8<sup>th</sup> February, 2023 on the merit and therefore the only way the Applicant can ventilate her grievance is through an appeal and not an application for review or to set aside.
13. This court finds no merit in this application because the reasons advanced are lame and misleading. The Applicant had more than sufficient time to file her submissions but failed to file any submissions. This court having rendered itself on the merit of the appeal itself became *funtus officio*.
14. In the premises, the application dated 23<sup>rd</sup> February, 2023 is simply unsustainable and is dismissed with costs.

**DATED, SIGNED AND DELIVERED AT KITUI THIS 4<sup>TH</sup> DAY OF MARCH, 2024.**

**HON. JUSTICE R. LIMO - JUDGE**

