



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Magecha v Kamau & another (Civil Appeal 52 of 2020)
[2024] KEHC 4596 (KLR) (12 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4596 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL 52 OF 2020
DO CHEPKWONY, J
APRIL 12, 2024**

BETWEEN

JOHN NGINGA MAGECHA APPLICANT

AND

RAPHAEL KINUTHIA KAMAU 1ST RESPONDENT

JAMES THENDU GITAU 2ND RESPONDENT

RULING

1. This is a ruling on Directions in respect of filing the Record of Appeal in the present Appeal. On 15th August, 2023, the Deputy Registrar issued Directions on filing of the Record of Appeal within 30 days.
2. On 28th November, 2023, when the parties appeared before the court, the Appellant's Counsel, Mr. Njoroge informed the court that he was unable to comply with the Directions as he was not able to file the Record of Appeal since his client was ailing and thus was unable to get instructions. He sought leave of 14 days to file the Record of Appeal.
3. Mr Muthomi, Counsel for the Respondent, opposed the application for leave of extension of 14 days to file a Record of Appeal. He stated that the Memorandum of Appeal was filed on 2nd April, 2020 and it was now the third year and the Record of Appeal has never been filed since. He states that the Appellant has not given a good reason why the time to file a Record of Appeal should be extended.
4. According to the Respondent, the trial court's decree had been extracted and a Bill of Costs filed and hence the appeal may just be an academic exercise.
5. From the court record, it is noted that the court delivered a ruling on 5th October, 2021 wherein a Notice of Motion application dated 11th March, 2021 in which the Plaintiff (Applicant) was seeking a review and or variation of an order made against him on 10th March, 2021 for Warrants of Arrest to issue, and to set aside. The matter then went silent until 21st July, 2023 when the court directed that it



be placed before the Deputy Registrar for taxation on 15th August, 2023. However, when the matter came up before the Deputy Registrar on 15th August, 2023, she issued directions that since the Record of Appeal had not been filed and the original record of proceeding had been availed, the same be filed within thirty (30) days from that date. The matter was then fixed before this court for directions to issue on admission and hearing of the appeal. It is on this 28th November that there were arguments on whether or not the appeal should proceed for hearing.

6. The Appellant's counsel has explained that the reason they have taken long to have the Record of Appeal ready is because his client, the Appellant has been ailing from cancer. Although he has not availed medical records to confirm this, this has not been rebutted by counsel for the Respondent. In that regard, this court is inclined to invoke the provision of Section 3A of the Civil Procedure Act and grant the Appellant a last chance to file a Record of Appeal on condition that:-
 - a. The Appellant files and serves the Record of Appeal within 21 days from the date of this ruling.
 - b. Failure to comply with this condition, the appeal will stand dismissed.
 - c. Mention on 13th May, 2024 for parties to confirm compliance and take further directions.

It is so ordered.

RULING DELIVERED, DATED AND SIGNED AT KIAMBU THIS 12TH DAY OF APRIL , 2024.

D. O. CHEPKWONY

JUDGE

In the presence of:

No appearance for and by either party

Court Assistant - Martin

