



Kamau v Njuguna (Civil Appeal E079 of 2021) [2024] KEHC 7161 (KLR) (3 May 2024) (Ruling)

Neutral citation: [2024] KEHC 7161 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E079 OF 2021
DO CHEPKWONY, J
MAY 3, 2024**

BETWEEN

JOSEPH NJUGUNA KAMAU APPELLANT

AND

HANNAH WAIRIMU NJUGUNA RESPONDENT

RULING

1. This court issued a Notice to Show Cause dated 26th June, 2023 for the Appellant to show cause why the Appeal should not be dismissed for want of prosecution. The Notice to Show Cause was accordingly served upon the parties herein.
2. In response to the Notice to Show Cause, the Appellant filed a Replying Affidavit by his legal Counsel, Mr. Waithaka Ngaruiya which was sworn on 15th November, 2023.
3. The Counsel avers that the Notice to Show Cause was served upon his firm via email on 11th August, 2023. He has stated that he was not served with last mention date of 26th June, 2023, hence his non-attendance before court on the said date. He thereafter filed the Record of Appeal on 25th July, 2022 and Supplementary Record of Appeal on 29th August, 2022.
4. Mr. Waithaka has added that his law firm actively pursued to get a mention date at the registry but was always informed to await for the availability of the file from the lower court so that the complete file could be retrieved before a date is fixed. The Counsel contends that there was no notification of the mention date for 26th June, 2023 or information that the lower court file had been availed and therefore the Notice to Show Cause came as a surprise to them.
5. Counsel contends that the failure to attend court on the date fixed for mention was not their fault or that of the Appellant as they have been keen on prosecuting the Appeal. He holds that the Appeal touches on the issues of interest, custody and maintenance of the minors hence dismissing it would be prejudicial to the Appellant. He seeks the court to allow the Appellant pursue the Appeal to conclusion.



6. When the matter came up for hearing of the Notice to Show Cause on 16th November, 2023, the Appellant's counsel reiterated his sentiments in the Replying Affidavit and emphasized that the Appellant was keen on prosecuting the Appeal hence serve the interest of justice if the Notice to Show Cause is struck out and the Appeal allowed to proceed for hearing on its merits.
7. In response to the Appellant's submissions, while acting in person, the Respondent submitted that she could not comprehend why the Appellant was appealing yet he has never complied with the court orders. That she is the one fending for the children, taking them to hospital and paying school fees. That the school for the elder child is from the insurance which they both contributed to but the Appellant has left the whole burden on her.
8. Having taken into account the submissions by both parties, I have considered the court record which confirms that the Appellant's Counsel has always been attending court even before the Ruling was delivered on 23rd June, 2022. That on 18th March, 2023, the matter was fixed for mention on 27th April, 2023 at the court registry as per the court stamp impended therein although that is no indication on whether either of the parties was aware.
9. On the said 27th April, 2023 the court was on leave and the matter was adjourned to 26th July, 2023. There is again no indication of service of the said mention date by the court. When this court reconvened on 26th June, 2023 neither of the parties attended court and having noted that there had been no activity undertaken in the matter since 23rd June, 2022, the Notice to Show Cause issued.
10. Nonetheless, the court finds the explanation given by the Appellant was satisfactory since it is evident that neither of the parties has been aware of the dates the matter has been fixed to come up in court. The record further reflects that the Record of Appeal and the Supplementary Record of Appeal have already been filed. Therefore, in the interest of justice the court allows the Appellant an opportunity to prosecute the appeal in the following directions:-
 - a. The appeal is hereby admitted for hearing and to be canvassed by way of written submissions.
 - b. The Appellant is granted thirty (30) days to file and serve written submissions on the appeal.
 - c. The Respondent is also allowed thirty (30) days corresponding leave to file and serve written submissions upon being served with the Appellant's submissions.
 - d. Mention on 8th July, 2024 to confirm compliance.

It is so ordered.

RULING DATED AND SIGNED AT KIAMBU THIS 3RD DAY OF MAY, 2024.

D. O. CHEPKWONY

JUDGE

In the presence of:

Mr. Mwenda holding brief for Mr. Waithaka for Appellant

Court Assistant - Martin

