



REPUBLIC OF KENYA



**Kabucho v Gathiongo (Civil Appeal 2B of 2023)  
[2024] KEHC 5262 (KLR) (Civ) (2 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5262 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYANDARUA**

**CIVIL  
CIVIL APPEAL 2B OF 2023**

**CM KARIUKI, J**

**MAY 2, 2024**

**BETWEEN**

**JOHN KAHWA KABUCHO ..... APPELLANT**

**AND**

**JOHNSON NJUGUNA GATHIONGO ..... APPLICANT**

**JUDGMENT**

1. The Applicant filed a bill of taxation on 15<sup>th</sup> March 2022 following the judgment delivered in his favour on 1<sup>st</sup> July 2021. The Respondent's counsel filed a replying affidavit. The matter came before the deputy registrar on 4/5/2023 and 22/6/2023 without an appearance from the Applicant. Consequently, the bill of taxation was dismissed on 22<sup>nd</sup> June 2023.
2. The Applicant then filed a Notice of Motion dated 14<sup>th</sup> August 2023 urging the court to reinstate the bill of taxation and set aside the dismissal orders of 22<sup>nd</sup> June 2023. In response, the Respondent filed his replying Affidavit dated 11<sup>th</sup> September 2023. The Applicant then filed his written submissions dated 30<sup>th</sup> December 2023, and the Respondent filed his submissions on 18<sup>th</sup> January 2024.
3. The Applicant contended that this was an old matter since 2004, there was no given time for the Applicant to be absent or fail in his duties, and it was only present technology hitches that resulted in the matter being dismissed. Reliance was placed on *Rocky Driving School Ltd v Cute Kitchen Ltd* [2015] eKLR. They asserted that the litigation started in 2004 to 2023, i.e., 19 years, and it is not fair for the bill of taxation to be dismissed at the last minute. They prayed that the bill of taxation be reinstated as it is a finality of any matter.
4. On the other hand, the Respondent argued that the Applicant, having filed their bill of costs, had to follow up and ensure that the matter was expedited without delay. Reliance was placed on *Utalii*



*Transport Company Limited & 3 Others v Nic Bank Limited & Another* [2014] eKLR & *Ronald Mackenzie v Damaris Kiarie* [2021] eKLR

5. The Respondent prayed that the court would find his favor and dismissed the application as it only caused prejudice to the Respondent and further wasted the honorable court's precious time. They also prayed for costs to be granted to them.

### **Analysis and Determination**

6. I have carefully considered the Applicant's application and the Respondent's replying Affidavit. The parties' written submissions thereto and the main issue for determination is whether the appellant's bill of taxation should be reinstated.
7. While I appreciate the Respondent's position that the Applicant having filed their bill of costs, it was their duty to follow up and ensure that the matter is expedited without undue delay, I must point out that I am inclined to excuse the Applicant's mistake attributed to technological hitches especially because of the length of time that this matter has been in court. I believe it is unreasonable that the Applicant chose to drop the ball at the last minute after such a protracted litigation period.
8. Notwithstanding the aforementioned views, it must be understood that this court will not excuse the laxity in the execution of the Applicant's mandate again. Once counsel is entrusted with a brief, he must ensure that he represents his client diligently and professionally to the best of his ability.
9. From the foregoing, I find that the failure of the Applicant's advocate to attend court was not deliberate and can be explained. Further, it is in the broader interests of justice to allow the application and reinstate the Applicant's bill of taxation. That being the case, I make the following orders:-
  - i. The dismissal orders dated 22nd June 2022 are hereby set aside; and the Applicant's bill of taxation dated 22<sup>nd</sup> February 2022 is reinstated.
  - ii. The Applicant shall undertake to prosecute the same within 60 days from the date of this ruling's failure to which the dismissal orders shall stand.
  - iii. The Applicant shall bear the costs of this application in any event.

**DATED, SIGNED, AND DELIVERED AT NYANDARUA ON THIS 2<sup>ND</sup> DAY OF MAY 2024**

.....

**C KARIUKI**

**JUDGE**

