



**Magoba v West Kenya Sugar Company Limited (Civil Appeal  
E019 of 2023) [2024] KEHC 4654 (KLR) (7 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 4654 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
CIVIL APPEAL E019 OF 2023  
WM MUSYOKA, J  
MAY 7, 2024**

**BETWEEN**

**TRIX NNOLI MAGOBA ..... APPELLANT**

**AND**

**WEST KENYA SUGAR COMPANY LIMITED ..... RESPONDENT**

*(An appeal arising from orders made in the ruling of Hon. EA Nyaloti, Chief Magistrate, CM, delivered on 14th November 2023, in Busia CMCCC No. E414 of 2021)*

**RULING**

1. The application, that I am called upon to determine, is dated 20<sup>th</sup> December 2023. It seeks stay of the proceedings in Busia CMCCC No. E414 of 2021, pending hearing and determination of the instant appeal.
2. The background, based on the grounds on the face of the said application, and the affidavit sworn in support of it, is that the matter before the trial court proceeded ex parte, at a time when the Advocate for the applicant had mis-diarised the hearing date. The applicant applied to have the respondent recalled, to testify in evidence-in-chief afresh, and for cross-examination. It complains that the ruling, on that application, was delivered in the absence of its Advocate, dismissing the application. The instant appeal arises from the orders made in that ruling. It argues that it has a good appeal on the merits.
3. The respondent filed grounds of opposition, dated 12<sup>th</sup> April 2024, arguing that he was not party to the application, the subject of the impugned ruling; he was never served with that application; the grievances between the appellant and the trial court could not found basis for an appeal; the appeal and the application were fatally defective; and an appeal from the impugned orders did not lie as a matter of right.



4. I have considered the matter herein, and I am persuaded that, in the interest of justice, I should grant the orders sought. Let the applicant have its day in the appellate court, for the issues raised by itself in its memorandum of appeal, and by the respondent in his grounds of opposition, to be thrashed out.
5. In view of paragraph 4 hereabove, I allow the application, dated 20<sup>th</sup> December 2023, as prayed, seeing that I had already granted temporary relief on the basis of the said application.
6. To move the matter forward, I hereby admit the appeal, and direct the applicant to file and serve the record of appeal in the next 30 days. The matter shall be mentioned on 17<sup>th</sup> June 2024, for compliance and directions on the disposal of the appeal. Orders accordingly.

**DELIVERED BY EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 7<sup>TH</sup> DAY OF MAY 2024**

**WM MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant, Busia.

Advocates

Mr. Janver, instructed by O&M Law LLP, Advocates for the applicant.

Ms. Eroba, instructed by Nandwa & Company, Advocates for the respondent.

