



**Shaba Civil Engineering Construction Limited v Tullow Kenya BV (Civil Suit 2 of 2016) [2023] KEHC 18639 (KLR) (20 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 18639 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT LODWAR  
CIVIL SUIT 2 OF 2016  
JK SERGON, J  
APRIL 20, 2023**

**BETWEEN**

**SHABA CIVIL ENGINEERING CONSTRUCTION LIMITED ..... APPLICANT**

**AND**

**TULLOW KENYA BV ..... RESPONDENT**

**RULING**

1. The subject matter of this ruling is the motion dated December 20, 2022 taken out by Tullow Kenya BV, the defendant/applicant herein whereof it prayed for the setting aside of the ruling and order delivered virtually on October 13, 2022. The applicant further sought for the motion dated May 19, 2022.
2. The applicant further sought for the motion dated May 19, 2022 to be heard afresh with due consideration of the documents, and responses and submissions filed by the defendant. The defendant/applicant filed in support of the motion the affidavit sworn by Emmanuel Wetangula. Shabaa Civil Engineering Construction Limited filed the replying affidavit sworn by Justus Ewoi to oppose the motion.
3. I have considered the grounds stated on the face of the motion plus the facts deponed in rival affidavits and submissions. It is the submission of the defendant/applicant that this court delivered its ruling on October 13, 2022 whereof it entered judgment in favour of the plaintiff and against the defendant.
4. It is pointed out by the defendant that this court arrived at the aforesaid decision without taking into account the defendant's grounds of opposition and written submissions in response and opposition to the application for entry of judgment.
5. It is averred that the aforesaid documents were filed in court and served upon the plaintiff's advocate by email on August 1, 2022.



6. In response to the application, the plaintiff/respondent stated that the application is frivolous and is meant to undermine the court process.
7. It is also argued by the plaintiff that the application does not meet the threshold of applications for setting aside of court orders hence it is an abuse of the court process.
8. The plaintiff further stated that the defendant has filed both a notice of appeal and the instant application for review which is not permissible in law.
9. In response to this averment, the defendant admitted that it filed a notice of appeal but did not file the appeal since typed proceedings have not been supplied as requested.
10. In other words, the defendant/applicant is saying that it has not filed the substantive appeal. With respect, I am convinced that the defendant was entitled to bring the instant application since it has not filed the substantive appeal.
11. It is not in dispute that this court issued its ruling on October 13, 2022 without taking into account the defendant's response and submissions.
12. This court expressly stated that the defendant had not filed the same. The plaintiff's advocate does not dispute that it was served with the defendant's grounds of opposition and written submissions. By inadvertence on the part of the court staff, the defendant's grounds of opposition and written submissions were not printed and placed in the court file to enable this court consider.
13. It is therefore clear that this is an error apparent in the court record which is sufficient ground to review this court ruling and order.
14. In the end, I find the motion dated December 20, 2022 to be meritorious. It is allowed, thus giving rise to issuance of the following orders:-
  - i. The ruling/order given on October 13, 2022 is set aside.
  - ii. The motion dated May 19, 2022 is reinstated and to be determined on merits afresh after taking into account the defendant's documents to wit grounds of opposition and written submissions both dated July 27, 2022.
  - iii. Ruling on the reinstated motion dated May 19, 2022 to be delivered on May 22, 2023.
  - iv. Each party to meet its own costs on the application

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 20<sup>TH</sup> DAY OF APRIL, 2023.**

**J.K. SERGON**

**JUDGE**

In the presence of:

Wakhisi for the Applicant

Miss Leah holding brief for Otieno for the Respondent

