



**ZWO v GVB (Matrimonial Cause E002 of 2021)
[2023] KEHC 17909 (KLR) (17 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 17909 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
MATRIMONIAL CAUSE E002 OF 2021**

**F GIKONYO, J
APRIL 17, 2023**

BETWEEN

ZWO PLAINTIFF

AND

GVB DEFENDANT

RULING

Case to Start De Novo?

1. This Ruling springs from the oral application made on 27/3/2023 by the legal counsel for the plaintiff, Ms Sabaya, that the case should start *de novo*. The case is part-heard before me. The One witness had testified but was stood down.
2. According to the said legal counsel, she had come on record and filed new documents. She urged this court to expunged earlier statement and commence hearing *de novo*.
3. On the other hand, defendant’s counsel was ready to proceed with one witness. He argued that the witness had been stood down to reply to their replying affidavit. They just adopted her statement. He asked whether the plaintiff was recanting her statement.

Analysis and Determination.

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4. There were circumlocutions witnessed. Parties herein either filed papers or documents out of time or without leave of the court which prompted endless applications for leave to reply to the late filing or address documents that were filed without the permission of the court. The back and forth brought about confusion in the proceedings. It also invited delay in the finalization of this case.



5. This case is peculiar. It must be decided on its circumstances. The proceedings are muddled-up and untidy. The court should now take charge in order to do justice; avoid delay and serve overriding objective of the law. The request for a *de novo* hearing is therefore, merited; it does not prejudice any party.
6. In consequence thereof, I direct and order: -
- i. The case shall start *de novo*. All previous proceedings are set aside.
 - ii. All pleadings, affidavits and documents filed herein other than the Originating Summons and the initial affidavit in support thereto shall be expunged from the record.
 - iii. The plaintiff shall then file and serve a comprehensive supporting affidavit, and a complete list of and documents in support of her claim within 14 days of today.
 - iv. Upon service in (ii) above, the respondent shall file and serve a comprehensive replying affidavit, and a complete list of and documents in support of his claim within 14 days thereof.
 - v. No party shall file any other pleading or affidavit or documents except in accordance with these directions or with prior express permission of the court. Any offensive filing shall be rejected and expunged from the record.
 - vi. The matter shall be mentioned on a date to be appointed by the court to ascertain compliance of these directions.
 - vii. Time is of the essence.
7. Parties and their respective legal counsel are referred to section 1A (3) of the [Civil Procedure Act](#) that: -
- "(3) A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act, to that effect, to participate in the process of the Court and to comply with the directions and orders of the Court."

8. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS 17TH DAY OF APRIL, 2023.

F. GIKONYO M.

JUDGE

In the presence of:

1. M/s. Sabuya for Applicant
2. Kapiyo for Respondent
3. Mr. Kasaso – Court Assistant

