



**Dawa v Guyo (Civil Appeal E138 of 2023) [2023] KEHC 18841 (KLR) (20 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18841 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL APPEAL E138 OF 2023**

**PM MULWA, J**

**JUNE 20, 2023**

**BETWEEN**

**SIKO WORME DAWA ..... APPLICANT**

**AND**

**GODANA HALAKE GUYO ..... RESPONDENT**

**RULING**

1. By a Notice of Motion Application dated May 22, 2023 the applicant seeks the following orders that:
  - i. Spent
  - ii. The 14 days period within which the applicant was to file and serve a Notice of Appeal be extended and the Notice of Appeal dated May 22, 2023 and filed on May 23, 2023 be deemed to have been filed and served within time.
  - iii. This Honourable Court be pleased to set aside the ruling in CMCC No 704 of 2018 dated April 18, 2023 by Hon Atiang Mitullah and all the other orders consequential thereto pending hearing and determination of the intended appeal.
  - iv. The Honourable Court be pleased to issue an order of stay of proceedings in CMCC No 704 of 2018 and any other consequential orders thereto pending the hearing and determination of this application.
  - v. The Honourable Court be pleased to order stay of proceedings in CMCC No 704 of 2018 and any other consequential orders pending the hearing and determination of the Applicants intended appeal.
  - vi. The replying affidavit dated March 6, 2023, sworn by Siko Warne Dawa be deemed as being duly filed and served.



- vii. This Honourable Court be pleased to order that the Civil Case in CMCC No 704 of 2018 starts de novo before another Magistrate at Thika Law Courts other than Hon. Atiang Mitullah.
  - viii. The application be heard inter partes on such date and time as this Honourable Court may direct.
  - ix. The proposed appeal be heard on priority basis.
  - x. The cost of this application to be provided for.
2. The application is brought under Articles 50(1) and 159 of the *Constitution*, Sections 3A, 79G and 95 of the *Civil Procedure Act* and Order 42 Rule 6(1) of the *Civil Procedure Rules*.
  3. The application was unopposed as the respondent despite being served failed to file a replying affidavit.
  4. The gist of the application is a ruling made in Thika CMCC No 704 of 2018 on April 18, 2023 where the applicant's (defendant in the lower court) replying affidavit was expunged thereby leading to an application seeking striking out of his defence and entry of judgment being allowed.
  5. The applicant has deponed that the delay in filing a Notice of Appeal was occasioned by failure of his previous advocates to notify him of the ruling of the lower court.
  6. I note that the said delay in not inordinate and is excusable.
  7. Consequently, I allow the application dated May 25, 2023 in the following terms:
    - i. The period to file notice of appeal extended. Notice of Appeal dated May 22, 2023 and filed on May 23, 2023 is deemed as properly filed upon payment of the requisite court filing fees.
    - ii. The applicant/appellant shall file serve the intended appeal documents within 30 days from the date herein.

Orders accordingly.

**RULING DELIVERED VIRTUALLY, SIGNED AND DATED AT KIAMBU THIS 20<sup>TH</sup> DAY OF JUNE 2023.**

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**P.M. MULWA**

**JUDGE**

**In the presence of:**

Mr. Kinyua – court assistant

Mr. Mutonyi - for the Appellant/Applicant

N/A - for the Respondent

