



**Mwanja v Aseka (Miscellaneous Civil Case E01 of 2023)
[2023] KEHC 18025 (KLR) (2 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18025 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS CIVIL CASE E01 OF 2023**

WM MUSYOKA, J

JUNE 2, 2023

BETWEEN

ZAKAYO MWANJA APPLICANT

AND

PATRICK ASEKA RESPONDENT

RULING

1. The Motion for determination is dated January 5, 2023. It is for leave to file appeal out of time, with respect to an interlocutory judgment entered on August 17, 2022, by Hon Wandere, Principal Magistrate, in Kakamega CMCCC No 342 of 2017. It is at the instance of Zakayo Mwanja, who I shall refer hereto as the applicant. The background given is that judgment was entered in absence of appearance, yet the applicant had filed a defence on July 12, 2019.
2. The respondent, Patrick Aseka, filed grounds of opposition. He argues that the Advocate who has filed the application is not properly on record, application is incompetent and defective in substance, there has been inordinate delay and laches, extension of time would be prejudicial, the intended appeal would be prejudicial, and there is otherwise mala fides frivolity abuse of court process and vexation.
3. The application was argued orally on February 8, 2023.
4. The allegations made in the supporting affidavit, of the applicant, were not controverted, that the default judgment was entered despite a statement of defence being on record. The default judgement was allegedly entered on August 17, 2022, while the statement of defence was filed on July 12, 2019.
5. Some of the facts deposed in the affidavit do not appear to be congruent. It is alleged that the default judgment was entered on August 17, 2022, and the bill of costs was filed on July 29, 2022. That cannot be, that a bill of costs is lodged at the registry, in a case where judgment has not been entered yet. A copy of the proceedings should have been attached to bring out clear facts on what exactly transpired.



6. Anyhow, the facts deposed in the supporting affidavit have not been controverted, by alternative facts, and I shall not address those issues at this stage.
7. I shall, instead, allow the application, dated January 5, 2023, in its entirety. Each party shall bear its own costs.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 2ND DAY OF JUNE 2023

W MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Appearances

Mr. Wafula, instructed by Wawire Wafula & Company, Advocates for the applicant.

Mr. Iddi, instructed by Nandwa & Company Advocates for the respondent.

