



**Mwale v Ali Cars Limited (Civil Appeal 003 of 2021)
[2023] KEHC 20048 (KLR) (Civ) (11 July 2023) (Directions)**

Neutral citation: [2023] KEHC 20048 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL 003 OF 2021

AN ONGERI, J

JULY 11, 2023

BETWEEN

JOSIAH MWALE APPLICANT

AND

ALI CARS LIMITED RESPONDENT

DIRECTIONS

- 1) The appellant filed CMCC No 4828 of 2016 on July 25, 2016 and the trial court entered interlocutory judgment on October 2, 2019 and proceeded with formal proof on the amended plaint which plaint was amended on July 29, 2019.
- 2) The trial court set aside the exparte judgment which was entered on October 28, 2018 upon finding that the hearing notice was served upon the respondents on October 26, 2018 before the appellant amended their plaint on July 29, 2019.
- 3) The appellant has appealed to this court against the trial court's ruling delivered on February 28, 2020 which set aside the judgment entered on October 22, 2019.
- 4) Upon perusing the original file I find that the appellant has two options.
- 5) The first option is to proceed with the appeal against the ruling by Hon Gicheha delivered on February 28, 2020 which set aside the judgment entered by Hon Gichora on October 22, 2019.
- 6) The second option which is the better option since there is no judgment on record is go back to the trial court, serve the amended plaint and give the respondent an opportunity to file their amended defence and have the case start denovo.
- 7) The appellant will have a right of appeal if he is still aggrieved with the decision of the trial court.



- 8) Since this case has been in court since 2016, I direct that the Deputy Registrar of this court forwards the file to the Chief Magistrate for purpose of taking a hearing before the Chief Magistrate for hearing of this case.
- 9) The Chief Magistrate is directed to expedite this case in view of article 159 of the Constitution which mandates all courts and tribunals to dispense justice without delay and without undue regard to procedural technicalities.
- 10) The original filed will be mentioned on July 25, 2023 before the Chief magistrate for purposes of expediting the same.

Dated, Signed and Delivered online via Microsoft Teams at Nairobi this 11th day of July, 2023.

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A. N. ONGERI

JUDGE

In the presence of:

.....for the Appellant

..... for the Respondent

