



**Haroon Yuasa Limited v Amukoya (Civil Miscellaneous Application  
E015 of 2021) [2023] KEHC 23402 (KLR) (13 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23402 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
CIVIL MISCELLANEOUS APPLICATION E015 OF 2021**

**WM MUSYOKA, J  
OCTOBER 13, 2023**

**BETWEEN**

**HAROON YUASA LIMITED ..... APPLICANT**

**AND**

**ANJELINE MORAA AMUKOYA ..... RESPONDENT**

**RULING**

1. These miscellaneous proceedings were initiated on February 17, 2021, by way of an ex parte Motion, dated February 15, 2021, principally for ordinary review of a decision of the court, in Busia CMCCC No E1 of 2021, of February 4, 2021. The ex parte application was placed before the Judge, on March 1, 2021, under certificate of urgency. It was directed that the application be served, to be heard inter partes on March 11, 2021, and that status quo be maintained. It was remarked that a paragraph in the supporting affidavit was crude, and was directed at the person of the court rather than the merits of the application.
2. The said Motion was not served, but the respondent nevertheless attended court on March 11, 2021, and filed grounds of opposition, on the same date, of even date. The applicant did not attend court on March 11, 2021. The application was put off to April 21, 2021. In the meantime, perhaps prompted by the remarks by the Judge of March 1, 2021, the applicant filed a notice, on March 22, 2021, dated March 19, 2021, withdrawing the application. The respondent withdrew her grounds of opposition, vide a notice filed on March 26, 2021, dated March 26, 2021, and substituted them with grounds of opposition, dated March 26, 2021, filed the same day, principally arguing that the application was sub judice, in view of a similar application filed in Busia CMCCC No E1 of 2021.
3. The notice of withdrawal of the application, filed herein on March 22, 2021, was never endorsed by the court to make it an order of the court. However, the applicant did not take any further steps in the matter thereafter, including not attending court when the matter came up. It was the respondent who kept the matter alive by fixing it for hearing on divers dates, and attending court on the dates allocated



for hearing and mention. The matter came up on April 21, 2021, June 16, 2021, September 21, 2021, October 26, 2021, December 14, 2021, February 15, 2022, April 13, 2022, June 8, 2022, October 4, 2022, November 10, 2022 and February 8, 2023. On all those dates, neither the applicant nor his Advocate attended court, except for June 8, 2022, when an Advocate held brief for Mr Ondego for the applicant. On most of those dates, Mr Ashioya was in attendance for the respondent. Directions were given on June 8, 2022, for disposal of the application by way of written submissions, and the respondent did file written submissions herein, on February 7, 2023, of even date. The applicant did not file any.

4. I find these proceedings peculiar. One, because the applicant discontinued them by way of a notice of withdrawal, but the respondent, nevertheless, maintained them thereafter by having them fixed for hearing, attending court and engaging the Judge. Two, that despite the notice of withdrawal being filed, the court continued to entertain them, and to give directions on how the withdrawn application was to be disposed of.
5. From what I can see on the record, the Motion, dated February 15, 2021, was withdrawn vide the notice of withdrawal filed herein on March 22, 2021. The application was spent after the filing of the said notice, and the applicant effectively treated the same as abandoned after that, for he never, thereafter, attended court personally or through his Advocate. The dead application was kept alive by the other side. The file herein should have been closed after March 22, 2021, and moved to the court archives, since it was opened solely for the purpose of that withdrawn application, and once it was withdrawn there was no other business for the court to conduct in the matter. All the proceedings that the court conducted, after March 22, 2021, were in vain. The court wasted its time on a non-existent application. I have deliberately avoided saying a word about the propriety or competence of the Motion, dated February 15, 2021, and I am content to leave it at that the same was withdrawn.
6. Coincidentally, I have just completed writing a judgment in Busia High Court Miscellaneous Civil Application No E035 of 2021, in respect of Judicial Review proceedings arising from the decision of the Chief Magistrate, in Busia CMCCC No E1 of 2021, of February 4, 2021. The said Judicial Review proceedings were initiated on May 26, 2021. The cause herein and that in Busia High Court Miscellaneous Civil Application No E035 of 2021 targeted the same decision, that made in Busia CMCCC No E1 of 2021, on February 4, 2021. One sought ordinary review of that decision, while the other sought Judicial Review of the same decision. The cause in Busia High Court Miscellaneous Civil Application No E035 of 2021 was filed after the withdrawal of the application herein. It could not be that the 2 causes could be maintained simultaneously, and the applicant herein had wisely withdrawn that herein, to allow him file that in Busia High Court Miscellaneous Civil Application No E035 of 2021.
7. As there is nothing pending determination in this matter, the final order shall be that the court file herein is hereby formally closed. The Deputy Registrar shall cause the file to be moved to the archives. The issue of costs ought not to arise, as the application, dated February 15, 2021, was never served on the respondent, going by the remarks by Mr Ashioya, before the Judge on March 11, 2021, and the respondent filed a response to the application despite not having been served, and maintained these proceedings thereafter even after the applicant had formally withdrawn the application, by notice filed in court. Orders accordingly.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA THIS.....13<sup>TH</sup>.....  
.....DAY OF.....OCTOBER.....2023**

**W MUSYOKA**

**JUDGE**



**Mr Arthur Etyang, Court Assistant.**

**Advocates**

**Mr. Ondego, instructed by Ondego Garo & Company, Advocates for the applicant.**

**Mr Ashioya, instructed by Ashioya & Company, Advocates for the respondent.**

**civil miscellaneous application no e015 of 2021 – ruling 2**

