



**Karori v Kaniaru (Civil Appeal E569 of 2024)
[2025] KEHC 13852 (KLR) (Civ) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13852 (KLR)

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

CIVIL

CIVIL APPEAL E569 OF 2024

LP KASSAN, J

OCTOBER 2, 2025

BETWEEN

CHARLES NJOROGE KARORI APPELLANT

AND

GEORGE KANIARU RESPONDENT

RULING

1. vide a memorandum of appeal dated the 26th day of the April 2024, the appellant seeks to have the Ruling of Honourable Ayieta set aside for several reasons captured in the said memorandum. I have read all the relevant documents and wish to note the following.

Small Claims Court

2. The very basis of establishing small claims Courts was to facilitate quick disposal of cases which I believe has achieved significant gains. This Court is guided by strict timelines and simple procedures. The uniqueness of this Court raises the bar of consideration when its proceedings are under scrutiny in Appellate Courts. Appellate Courts must exercise a lot of cautiousness when tempering decisions emanating from these Courts lest the reason of establishing them is wished away. It is generally accepted that these Courts are special in away compared to other Courts.

Lower Court proceedings:

3. The Appellate Court being a Superior Court is mandated to interrogate the Lower Court's proceedings in its entirety and this is what I have done. In fact, the proceedings largely determine the Appeal. From the proceedings, this matter was Mentioned on the 6th November 2023 when both parties were absent. On the 9th day of November, 2023, the Claimants Counsel informed the Court that the Respondent had been served with the claim on the 31st October 2023 and so the matter was mentioned on the



when the Respondent advocate sought for 7 days to file response and the matter was scheduled for the 23rd day of November 2023. On the 23rd day of November 2023, the Respondent advocate sought a further 2 days to file a response and so the matter was adjourned to the 28th day of November 2023. On the said date, a different advocate appeared for the Respondent and sought for an adjournment which was declined. At this juncture it is imperative to note that the said advocate said " I do wish to come on record for the Respondent. I was given instructions yesterday". This statement may be true but is likely to open a pandoras box where parties wait for the last time to change advocates in order to scuttle expeditious determination of cases as per the strict times. This Court is well aware of the rights of parties to change advocates but this right should be exercised appropriately. As I said that these Courts are special, it is not enough for an advocate coming on record to say that he was instructed recently when the Court has been " caught" by timelines. Cogent reasons must be advanced to trigger adjournment for the Court to deviate from following the set timelines. In this case, there was an advocate who appeared twice with a promise of filing a response and so a new advocate coming on record during hearing must explain why the Court should adjourn the matter because there must be a reason as to why the Respondent instructed another advocate otherwise the Court may impute that the new instructions were meant to seek adjournment. If this Court was to hold that the coming of a new advocate is a clear reason for adjournment, then what will prevent litigants seeking to delay matters from changing advocates in the last minute? From the proceedings, the reason by the Respondent first advocate of seeking an adjournment to file a response has not been given too and so any other reason thereafter in this appeal (failing to locate the driver) may be treated as an afterthought or with a pinch of salt. I therefore make a finding that the proceedings in the small claims must be conducted with a lot of seriousness because time is of essence and Courts are obliged to comply.

Draft Response to the Claim

4. I have looked at the response to the Claim which alludes that the accident was caused by a huge rock and another motor vehicle. The issue of another motor vehicle ought to have been brought in the proceedings by seeking leave to file third party proceedings. This again does not raise the bar as required in the Small Claims Court. The respondent did not attach an official document such as the police abstract to support to convince the Court that the defence is credible. A mere witness statement does not automatically lead to the setting aside of a default judgement especially where a party has failed to comply with the Courts timeline.

Delay in filing the application

5. This is also very important. The delay of 68 days significantly affects the decision of this Court in determining whether to set aside the default Judgement or not. Suffice to say that the default judgement was entered in presence of the Respondent's advocate.
6. The conclusion is that the appeal is dismissed with costs

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 2ND DAY OF OCTOBER 2025.

HON. L. P. KASSAN

JUDGE

In the presence of:

Abiero for Applicant

Njuguna for Respondent

Carol – Court Assistant

