



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Omondi v Ouma (Civil Appeal E073 of 2023)
[2025] KEHC 13812 (KLR) (3 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 13812 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL E073 OF 2023
SM MOHOCHI, J
OCTOBER 3, 2025**

BETWEEN

DAVID OMONDI APPELLANT

AND

BARRACK TAABU OUMA RESPONDENT

JUDGMENT

1. This is an interlocutory Appeal contesting a Ruling dated 6th May 2022 which dismissed a Misc. Application No. E049 of 2020 seeking to hold the Respondent in contempt as well as stay proceedings for contempt to await the determination of HCA E130 of 2021.
2. The Application was largely dismissed for contravention of Order 9 Rule 9 where the Applicant was being represented by an advocate not properly on record
3. This Court on the 11th of March 2025 in the presence of the parties admitted the Appeal as ripe for hearing and directed the same be heard by way of filed written submissions.
4. By the 29th July 2025, the Appellant confirmed to the Court of having served its written submissions upon the Respondents on the 22nd of May at 9.54am.
5. The Respondent was yet to comply but was granted 14 days as the Court fixed the judgment date.
6. At the time of writing the judgment the Respondent had not filed any written submission while the Appellant had on the 22nd of May 2025 filed written submissions relating to High Court Civil Appeal no E130 of 2022.
7. None of the parties have complied but the Court nonetheless proceeds to consider the Appeal against the pleadings on record being the Record of Appeal and the Memorandum of Appeal.



Analysis and Determination

8. I have exhaustively considered the record of appeal, the impugned ruling of the trial court, the appellant's grounds of appeal, as well as the law.
 9. In reviewing decisions of this nature from trial courts, as a first Appellate Court, the legal standard of review to be deployed is an abuse of discretion standard. A trial court judicial officer is entitled to exercise her discretion in determining whether to allow or dismiss an application, under this standard, this Court will only review a discretionary decision if it was made capriciously, arbitrarily, in plain error, or otherwise not in accordance with the law or logic.
 10. A reversal under this standard can only happen where this Court is persuaded that the reviewed decision lies beyond the pale of reasonable justification or range of permissible outcomes under the circumstances. In reviewing affidavits and other pieces of evidence placed before the trial Court to assist it in using its discretion, the standard set in *Selle vs. Associated Motor Boat Co. Limited*(1968)EA 123) on a first Appellate Court's duty to reappraise the evidence and come up with its own independent evaluation and conclusions is applicable.
 11. The singular issue for determination is whether the trial court erred in dismissing the Appellant's Application to find the Respondent in contempt, as well as stay proceedings for contempt to await the determination of HCA E130 of 2021.
 12. The entire Appeal is bereft of apparent exercise of discretion in an injudicious manner or capriciously, arbitrarily, in plain error, or otherwise not in accordance with the law or logic.
 13. On the contrary the Appellant attempts to reargue the dismissed Application contending that the judicial officer misinterpreted and mis applied the law.
 14. Order 9 Rule 9 was a regulatory creature to protect advocates who conduct trials for many years only for a litigant to abruptly change advocates after judgment. The Appellant herein changed advocates ignoring procedure and as such all pleadings filed by the advocate improperly on record were struck-out.
 15. I find no basis to disturb or interfere with the discretion exercised by Hon. Orege which reasoning this Court concurs with.
 16. Accordingly, I find the Appeal to be without merit and the same is dismissed.
 17. By virtue of the Appeal proceeding undefended this Court shall not grant any costs
- It is So Ordered.

SIGNED, DATED AND DELIVERED AT NAKURU ON THIS 3RD DAY OF OCTOBER 2025.

.....

JUSTICE MOHOCHI S.M
JUDGE

