

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA NAIROBI
CIVIL APPELLATE DIVISION
HC MISC E150 OF 2025

ISAIH OCHANGA ONYANGO.....
APPLICANT

VERSUS

ZACHARY MBOCHING'NGA1ST
RESPONDENT

KENYA BROADCASTING CORPORATEION.....2ND
RESPONDENT

OUMA NELLY.....3RD
RESPONDENT

RULING

1. This is an Application to appeal out of time against a decision that was rendered in 2022, three years way back before filing it. The brief history of this matter is that the Lower Court did not specify which defendant was liable and based on the Appellant's advocate interpretation of the Judgement, his Client was not liable. This position was bolstered by the 1st Respondent's advocate via a letter dated the 8th day of November 2022 which indeed agreed that the Appellant was not liable. It was until the 28th day of January 2025 when warrants of arrest had already been issued against the Applicant that Hon Mwangi (not the Magistrate who wrote the Judgement) interpreted the Judgement

to mean that all defendants (including the Appellant) were liable prompting this application.

2. The facts in this matter is clear- and that is for more than 2 years, both the Appellant and the Respondent believed that the Appellant was not liable as the Judgement did not specify who was to blame. Clearly there was a reason for this belief and also that something was wrong in the Judgement that necessitates interrogation by this Court. The Magistrate who interpreted the Judgement did not write it and his interpretation of the Judgement goes against the opinion of two advocates from opposing sides.
3. The turn of events after more than two years clearly created some confusion and the Appellant who was in a "slumber" or basking under the sun for that period of time could not be expected to quickly adjust to the new situation he found himself in. This is an Appeal that must be heard and the only way is to allow the application.
4. Where there is an issue of fault that is admitted by both parties in a judgement, the issue of prejudice may affect any party and so it is prudent to maintain status quo. Consequently, the application is allowed.
5. Each party shall bear own costs

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

**HON L P KASSAN
JUDGE**

In the presence of;

Kwarikwar holding brief Chacha for Applicant

No appearance for Respondent

Carol - Court Assistant