

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
[MILIMANI LAW COURTS]
THE CIVIL APPELLATE DIVISION
(Coram: A.C. Mrima, J.)
CIVIL APPEAL NO. E351 OF 2024

-between-

THOMAS MOMANYI BURUCHARA.....
APPELLANT

-versus-

MUUSAN TRADING LTD.....1st
RESPONDENT/APPLICANT

FANCY ISUNGWA KASINA.....2nd
RESPONDENT

RULING

1. Before Court for determination is an application by way of a Notice of Motion dated 6th May 2025 filed by the *Muusan Trading Limited*, the Applicant. The application seeks to set aside the orders issued on 6th May 2025 dismissing the then Applicant's application by way of Notice of Motion dated 21st March 2025, which application sought to review the judgment of this Court in this appeal.
2. The instant application was supported by the grounds on the face of it and the supporting affidavit of *Frank Adede*, Learned Counsel for the Applicant. It was sworn on 6th May 2025. Learned Counsel averred that his non-attendance on 6th May, 2025 was occasioned by connectivity issues as when the matter was called out, his call dropped and his efforts to join the Court session again were futile as the court session had ended. Additionally, he emphasized that he was desirous of prosecuting the application dated 21st March 2025 as he had already filed written submissions in respect of that application and further that the instant application was filed timeously. In the end, he averred that the Respondents would not be prejudiced should the orders sought be granted.

3. The application was strenuously opposed by the Appellant and 2nd Respondent herein. The Appellant filed a Replying Affidavit dated 23rd May 2025 sworn by *Musili Mbiti*, Learned Counsel. It was averred that the Applicant had failed to give any satisfactory reason for their failure to prosecute the application which was dismissed and that the instant application was meant to deny him the enjoyment of the fruits of the judgment. Additionally, the Appellant averred that the Applicant had failed to comply with the orders of this Court given earlier on and that should the Court be inclined to grant the orders sought, then the Applicant should be condemned to pay throw away costs of Kshs.30,000/=.
4. The 2nd Respondent on the other filed a Replying Affidavit sworn by Learned Counsel on 11th July 2025. It was averred that the application ought to be dismissed for reason that the Applicant had failed to comply with the orders of this Court, and to this end, he stated that the Applicant only filed their written submissions to the application dated 21st March 2025 on 6th May 2025, which was outside the timelines issued by this Court.
5. Whereas the Applicant filed written submissions dated 6th July, 2025 buttressing his position, the Respondents elected to rely on their responses and did not file written submissions.
6. Having considered the application and parties' rival positions, this Court finds that the reasons for non-attendance given by the Applicant's Counsel are reasonable. This Court further notes that the Applicant filed written submissions on the dismissed application albeit outside the timelines given by this Court. Be that as it may, this Court finds that the application ought to be allowed and the Applicant granted an opportunity to argue the review application. The Court is also of the considered position that given the circumstances giving rise to the instant application, no party be condemned to costs.

7. As I come to the end of this ruling, I sincerely tender my apologies for the late delivery of this decision. The delay was occasioned by the volume of work at the Judicial Service Commissioner where I sit as a Commissioner. Apologies galore.
8. In the end, the following orders hereby issue: -

[a] The Notice of Motion dated 6th May 2025 is allowed to the extent that the dismissal order of 6th May 2025 is hereby set aside and the Notice of Motion dated 21st March 2025 is reinstated for hearing.

[b] The Appellant and the 2nd Respondent are hereby leave to file and serve their written submissions to Notice of Motion dated 21st March 2025, if not yet, within 14 days of this order.

[c] The Applicant will be at liberty to file and serve supplementary submissions, if need be, within 7 days from the date of service.

[d] This matter will then be placed before Court No. 2 for fixing a ruling date upon expiry of the timelines set herein and the date shall be communicated to the parties.

[e] There shall be no orders as to costs.

Orders accordingly.

DELIVERED, DATED and SIGNED at NAIROBI this 29th day of January, 2026.

**A. C. MRIMA
JUDGE**

Ruling virtually delivered in the presence of:

No appearance for parties.

Michael/Amina - Court Assistants.