



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kenya Women Microfinance Bank PLC v Munyi (Civil Appeal  
E096 of 2022) [2026] KEHC 3402 (KLR) (26 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 3402 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CIVIL APPEAL E096 OF 2022  
EM MURIITHI, J  
FEBRUARY 26, 2026**

**BETWEEN**

**KENYA WOMEN MICROFINANCE BANK PLC ..... APPELLANT**

**AND**

**RUDIAH WAWIRA MUNYI ..... RESPONDENT**

*(An Appeal from the Ruling of Hon. Grace W. Kirugumi (P.M)  
delivered on 12/10/2022 in Kerugoya CMCC No. E036 of 2020)*

**JUDGMENT**

1. The Appellant filed an application dated 12/9/2022 seeking to arrest the judgment slated for 16/9/2022, setting aside of all ex parte proceedings and hearing of the suit de novo on merits, on the ground that it was not served with any hearing notices.
2. In her response, the Respondent insisted the Appellant had been duly served with the requisite hearing notices, but it elected not appear.
3. In its impugned ruling, the trial court dismissed the Appellant's application with costs.

**The Appeal**

4. On appeal, the Appellant filed its Memorandum of Appeal on 24/10/2022 raising 2 grounds:
  1. The Learned Trial Magistrate failed to appreciate the constitutional principle that justice ought to be administered without undue regard to technicalities, thereby denying the Appellant herein an opportunity to be heard on merits.
  2. The Learned Trial Magistrate failed to appreciate the principles of Natural Justice that a party should not be condemned unheard and went ahead to issue Orders that consequently condemned the Appellant unheard.



## **Duty of the Court**

5. This being a first appeal, this court is duty bound to delve at some length into factual details and revisit the facts as presented in the trial court, analyse the same and arrive at its own independent conclusions, but always remembering that, the trial court had the advantage of seeing the witnesses testify. (See *Selle & Another v Associated Motor Boat Company Ltd & Others* [1968] EA 123).
6. The application was canvassed by way of written submissions, which were duly filed by both parties.

## **Submissions on Appeal**

7. The Appellant urges that it was denied an opportunity to be heard against the rules of natural justice, and cites *Republic v Public Procurement Administrative Review Board & 2 others* [2018] eKLR, *Richard Nchapi Leiyagu v IEBC & 2 others* [2013] eKLR, *Nyamu v Mugambi* (Civil Case E005 of 2021) [2022] KEHC 405 (KLR) (21 April 2022) (Ruling) and the Court of Appeal Uganda in *Wahendeya William Giboi v Gaboi* Civil Application No. 8 of 2002.
8. The Respondent did not file any submissions.

## **Analysis and Determination**

9. From the grounds of appeal, the issue for determination is whether the trial court erred in dismissing the Appellant's application.
10. The crux of this appeal is the trial court's refusal to allow the suit to start de novo, on the objection that the Appellant was condemned unheard.
11. The Court's discretion in the matter is set out in Order 12 Rule 2 of the Civil procedure Rules as follows:

- “2. When only plaintiff attends [Order 12, rule 2]  
If on the day fixed for hearing, after the suit has been called on for hearing outside the court, only the plaintiff attends, if the court is satisfied—
  - (a) that notice of hearing was duly served, it may proceed ex parte;
  - (b) that notice of hearing was not duly served, it shall direct a second notice to be served; or
  - (c) that notice was not served in sufficient time for the defendant to attend or that for other sufficient cause the defendant was unable to attend, it shall postpone the hearing.”

12. The record shows that on 22/6/2022, Ms. Makazi for the Respondent informed the court that “I am ready to proceed. However, I served Mr. Kimaita on 20/6/2022. I have not filed hearing notice.”  
The court adjourned the matter to 3/8/2022 and directed a Hearing Notice to be served.
13. On 29/6/2022, the Respondent's counsel duly served the Appellant's counsel with the Hearing Notice of 3/8/2022 via email, as shown by the Affidavit of Service sworn on 2/8/2022.
14. The court takes cognizance of the Affidavit of Service sworn on 2/8/2022 illustrating service of the Hearing Notice of 29/6/2022 upon the Appellant's counsel, and that the trial court on 3/8/2022 proceed to hearing after noting that “there is an affidavit of service”.



15. The Appellant's counsel had equally been served with the pre-trial Notice on 4/1/2022 via email, which elicited the response dated 10/1/2022 as follows:

“We acknowledge receipt of your PTC notice, however, the date is not convenient for us and as such it is received under protest.”

16. The court finds that the Appellant was duly served with notice for the hearing date of 3/8/2022 through its appointed counsel, Mr. Kimaita, but it elected not to attend court, and the matter properly proceeded ex parte. The Appellant is the author of its own misfortune, and equity cannot aid an indolent litigant. The Court also notes that on 18/5/2022 when the matter came up for hearing and the plaintiff was ready with a witness, Counsel for the defendant applied for adjournment on the ground that he was before the Court of Appeal and the case was adjourned with a minute: “Case adjourned. Last adjournment for the defence”.

17. A party cannot complain of denial of right to be heard when opportunity had been granted by Notice of hearing given and the Court, in default of attendance of the party, proceeds with the hearing in accordance with the rules of court. The rule of law principle by which the rule of natural justice and constitutional right to hearing is underpinned requires that the procedure rules prescribed for the hearing of disputes before the court be observed.

18. This court does not find any misapprehension of the law or facts by the trial court, to warrant its interference with the exercise of discretion by the trial court under Rule 12 (2) (a) of the Civil Procedure Rules. See *Mbogo v. Shah* (1968) EA 93 that:

“A Court of Appeal should not interfere with the exercise of the discretion of a judge unless it is satisfied that he misdirected himself in some matter and as a result arrived at a wrong decision, or unless it is manifest from the case as a whole that the judge was clearly wrong in the exercise of his discretion and that as a result there has been misjustice.”

The appeal, therefore, lacks merit and it will be rejected.

## **ORDERS**

19. Accordingly, for the reasons set out above, the Court finds that the appeal is without merit and it is dismissed.

20. The appellant shall pay the costs of the appeal to the respondent.

Order accordingly.

**DATED AND DELIVERED THIS 26<sup>TH</sup> DAY OF FEBRUARY 2026.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Ms. Maina for the Appellant.

Mr. Kipruto for Ms. Kimotho for the Respondent.

