



REPUBLIC OF KENYA



KENYA LAW
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**Chatur v Habib & 6 others (Civil Appeal 543 of 2019)
[2025] KECA 1463 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KECA 1463 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL 543 OF 2019
DK MUSINGA, F TUIYOT'T & GV ODUNGA, JJA
JULY 31, 2025**

BETWEEN

MADATALISABERALI CHATUR APPELLANT

AND

FARAH HABIB 1ST RESPONDENT

HARUN NDUBI 2ND RESPONDENT

ALI-AMIN 3RD RESPONDENT

**REGIONAL REACH MEDIA COMPANY LIMITED T/A K24
TV 4TH RESPONDENT**

KOFA MRENJE 5TH RESPONDENT

JOSEPHINE MAINA 6TH RESPONDENT

MARIA GALANG 7TH RESPONDENT

(Being an appeal against the order of the High Court of Kenya at Nairobi (L. Njuguna, J.) delivered on 4th December 2018 in Civil Suit No. 106 of 2011)

JUDGMENT

1. This is an appeal against the exercise of discretion by a trial court declining to grant an adjournment when a case came up for hearing.
2. In doing so, the trial court (Njuguna, J.) noted:

“The court has heard and considered the application for adjournment made by counsel for the plaintiff. It has also considered the objections raised by counsel for the defendants. The



matter come up in court on the 5/7/2018 when the plaintiff was not ready to proceed. The court granted the last adjournment and fixed it for hearing on the 17/10/2018.

On the 5/7/2018, the court granted the last adjournment in view of the age of the matter. On 17/10/2018, the client again indulged the plaintiff and granted him the very last adjournment. Today, the court has been told that the plaintiff is unwell and medical documents have been presented to the court. Upon perusal of the same the court notes that there is no evidence that the plaintiff has been treated recently and the documents do not portray a patient who cannot be able to attend court for the hearing of his case.

The court has accommodated the plaintiff on several occasions which I believe is good enough for justice to be seen (sic) be have been done. There has to be an end to litigation and a plaintiff who drags other parties to court should be prepared to prosecute his matter expeditiously.

In the premises aforesaid the application for adjournment is declined.”

3. Although the appellant impugned this decision on five(5) grounds of appeal, highlighting the written submissions filed on behalf of the appellant at plenary hearing of this appeal, learned counsel Ms. Kimathi identified the main issue for determination as being whether the learned trial Judge exercised her discretion properly in refusing to grant the adjournment
4. Submitting on the concept of judicial discretion, the appellant cited *JMM v GNJ [2023] KECA 99 (KLR)* where this Court defined judicial discretion as the exercise of judgment by a judge or court based on what is fair under the circumstances and guided by the rules and principles of law and that the exercise of discretion must be based on prudence, rationality, and reasonableness, without hard and fast rules. Further, citing *Mbogo and Another v Shah [1968] EA 93*, the appellant argued that an appellate court should only interfere with discretion of a lower court if that court's decision was clearly wrong, if the court acted on improper considerations, or if the court failed to consider relevant factors. Furthermore, Article 159(2)(d) of *the Constitution* mandates that justice be administered without undue regard to procedural technicalities, and Section 1A(1) of the *Civil Procedure Act* emphasises the need for just, expeditious, proportionate, and affordable resolution of disputes.
5. The appellant contended that the trial court erred in refusing the adjournment request, despite being informed that the appellant, a diabetic heart patient, had recently returned from medical treatment abroad. Medical records were produced to substantiate the need for the check-ups. The appellant complained that he was not accorded a fair trial under Article 50(1) of *the Constitution*. Reference was made to the decision in *Japhet Muroko & another v Independent Electoral & Boundaries Commission & 2 others [2018] KECA 457 (KLR)*, for the general considerations for adjournments, including the sufficiency and truth of reasons, likelihood of miscarriage of justice, and whether costs can mitigate prejudice. Similarly cited was the decision in *Pandya Memorial Hospital v Geeta Joshi [2020] eKLR* where this Court highlighted the elements for consideration in an application for adjournment: adequacy of reasons for the application, degree of prejudice, whether the other party may be compensated through costs, and conduct of the parties and/or their representatives. The appellant asserted that the medical reasons warranted the adjournment and that the Judge's hard stance amounted to prejudice, arguing that an unwell litigant should not be denied access to the courts.
6. Learned counsel Mr. Okoth made oral submissions on behalf of the 1st respondent. He asserted that, at trial, the appellant was indolent and not keen on prosecuting his case. Counsel cited two occasions when the appellant sought adjournments that were granted, 5th July 2018 and 17th October 2018. That on 4th December 2018, the trial court declined to grant the adjournment because it was not satisfied that, on the medical documents availed by the appellant, he could not attend court on that day.



7. Counsel relied on sections 1(A) and 1(B) of the *Civil Procedure Act* for the argument that there must be timely disposal of proceedings and that litigation must come to an end. The trial court was defended as having accommodated the appellant on several occasions and that the appellant was given sufficient opportunity to prosecute his case.
8. The appellant fully appreciates that what he is challenging is the exercise of judicial discretion. The latitude of an appellate court to upset a lower court's exercise of discretion is circumscribed. On this, the Supreme Court in *Sirma v Independent Electoral and Boundaries Commission & 2 others* [2019] KESC 64 (KLR), reiterated:

“.... we affirm that we would only interfere with the Appellate Court's exercise of discretion if we reach the conclusion that in exercise of such discretion, the Appellate Court acted arbitrary or capriciously or ignored relevant facts or completely disregarded the principles of the governing law leading to an unjust order. Conversely, if we find that the discretion has been exercised reasonably and judiciously, then the fact that we would have arrived at a different conclusion than the Court of Appeal is not a reason to interfere with the court's exercise of discretion.....

.... On our part, we can only interfere with the appellate court's exercise of discretion if the Appellant can show that:

 - i. The appellate court acted on a whim or that;
 - ii. Its decision is unreasonable and
 - iii. It is made in violation of any law or *the Constitution* or that;
 - iv. It is plainly wrong and has caused undue prejudice to one party.”
9. The appellant chose to file a record of appeal which is certainly incomplete. It does not contain proceedings of the trial court prior to 4th December, 2018 when the impugned order was made. The record does not include copies of the medical documents which the appellant's lawyer had relied on to seek the adjournment. When we raised this matter with Ms. Kimanthi, she responded that she had noted the incompleteness of the record but she could not comment on it as she only recently took up the conduct of the appeal.
10. This has serious implications to the fate of the appeal. The trial Judge declined to grant an adjournment for two reasons. The appellant had applied for adjournments in the past and the trial court marked one a “last adjournment” and a further adjournment the “very last adjournment”. Second, the trial court observed that the medical documents relied on for seeking the adjournment did not reveal that the appellant had been treated recently or that he was not able to attend court for the hearing on that day.
11. The handicap we suffer is that without a full record of proceedings and the relevant medical documents, we are unable to test the exercise of the trial court's discretion against the principles rehashed in *Sirma* (supra). As it was upon the appellant to prepare and file a complete record, then he must suffer the consequences of his failure. The appeal is dismissed with costs to the 1st respondent as the other respondents neither attended Court nor filed any submissions.

DATED AND DELIVERED AT NAIROBI THIS 31ST DAY OF JULY, 2025.

D. K. MUSINGA (PRESIDENT)

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JUDGE OF APPEAL

F. TUIYOTT

.....

JUDGE OF APPEAL

F. V. ODUNGA

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

