



Mutuku v Gitau (Civil Application 22 of 2020) [2024] KECA 396 (KLR) (18 April 2024) (Ruling)

Neutral citation: [2024] KECA 396 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION 22 OF 2020**

JM MATIVO, JA

APRIL 18, 2024

BETWEEN

JOSEPH MUINDE MUTUKU APPLICANT

AND

MILKA MUGURE GITAU RESPONDENT

*(An application for extension of time to file Notice of Appeal and Record of Appeal out of time in an intended Appeal from the Ruling of the High Court of Kenya at Nakuru (D. Musinga, J as he then was) delivered on 26th June 2006 in //**Nakuru HCC No. 50 of 1980)*

RULING

1. Vide an application dated 20th June 2020, brought under Rule 4, of the [Court of Appeal Rules](#) 2010, the applicant prays for extension of time within which to file and serve Notice of Appeal and the Record of Appeal against the Judgment issued 26th June 2006 in Nakuru High Court Case Suit No. 50 of 1980.
2. The application is premised on the grounds listed on the face of the application and the applicant's supporting affidavit sworn on 28th June 2020. The grounds in support of the application are that: - (a) the applicant was unwell and was unaware of the Ruling delivered on 26th June 2006; (b) the applicant is now desirous to appeal against the ruling out of time; (c) the appeal has high chances of success.
3. On 26th March 2024 at 9:22 AM the Deputy Registrar of this Court sent out a hearing notice via e-mail informing counsel/the parties herein that the instant application would be heard by way of written submissions and there shall be no appearance of counsel in court or via video link. In that regard, the applicant and the respondent were reminded to comply with the Court's directions relating to service and filing of submissions before the hearing date.
4. Today, 18th April 2024 at 9.00AM when the application came up for hearing before me, and as at the time of writing this ruling, none of the parties had complied with the Court's directions on case



management issued on 14th February 2024 and the directions issued on 26th March 2024. The directions were communicated to the parties respective e-mails:

kagucia@africaonline.co.ke;kaguciaadv@gmail.com; mirugi.mirugi@gmail.com and mirugi@mirugi.co.ke.

5. Rule 58 of the *Court of Appeal Rules*, 2010 stipulates as follows:

1. If, on any day fixed for the hearing of an application, the applicant does not appear or comply with directions, the application may be dismissed, unless the Court sees fit to adjourn the hearing:

Provided that the Court may order that an application may be heard by way of written submissions and where parties have filed written submissions, the court shall consider the submissions.

6. Pursuant to the above rule, and being duly satisfied that the parties were duly served as herein above stated, and despite being served, they have failed to comply with the Court's directions, I hereby dismiss the instant application in accordance with Rule 58 (1) of this Court's for non-compliance with the directions of the court issued on 26th March 2024.

DATED AND DELIVERED AT NAKURU THIS 18TH DAY OF APRIL, 2024.

J. MATIVO

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

Deputy Registrar

