



**Corporate Insurance Company Limited v Rainbow Cabs & Car Hire Limited  
(Admiralty Cause 352 of 2012) [2022] KECA 1233 (KLR) (4 November 2022) (Ruling)**

Neutral citation: [2022] KECA 1233 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
ADMIRALTY CAUSE 352 OF 2012  
HA OMONDI, KI LAIBUTA & PM GACHOKA, JJA  
NOVEMBER 4, 2022**

**BETWEEN**

**CORPORATE INSURANCE COMPANY LIMITED ..... APPELLANT**

**AND**

**RAINBOW CABS & CAR HIRE LIMITED ..... RESPONDENT**

*(Being an application seeking reinstatement of Civil Appeal Number 352 of 2012 from the judgment/decree of the High Court of Kenya at Nairobi (Mugo, J.) delivered on 17th February 2011 in High Court Civil Case No. 415 of 2009)*

**RULING**

1. Before us is a notice of motion dated December 20, 2017 brought under Rule 102(1) of the [Court of Appeal Rules, 2010](#) and Sections 3A & 3B of the [Appellate Jurisdiction Act](#) and Article 159 of the [Constitution, 2010](#).
2. The application seeks an order for the reinstatement of the Appeal dated 21<sup>st</sup> of December 2012, which was dismissed for non-attendance on November 27, 2017.
3. The application was listed for hearing through the go to online platform and, when called out, the appellant / applicants' counsel was present, but the respondent was not represented. The court satisfied itself that the respondent's advocate was duly served.
4. The application is supported by the affidavit of Gertrude Chepng'etich who depones, inter alia :that she has the conduct of this appeal on behalf of the appellant; that the appeal was listed for hearing on November 27, 2017; on September 13, 2017 the Appeal came up for pretrial conference, and that it was directed that it be heard by way of written submissions on 27<sup>th</sup> November 2017; that she erroneously diarized it as a mention in the high court; that the hearing notice was served on September 22, 2017, but that it was not filed because the file was with the advocate who was preparing the submissions; that, on November 27, 2017, the matter was not listed in the high court, and that is when she realized



that the appeal was coming up for hearing in the court of appeal; that she rushed to the court of appeal but the appeal had already being called out and dismissed; and that the non- attendance was caused by an honest mistake.

5. We have carefully considered the application, the supporting affidavit and the documents on record. The respondents have not filed a replying affidavit or written submissions in opposition.
6. We note that the appeal was dismissed on November 27, 2017, and that this application was filed on December 20, 2017, which was within 30 days of the dismissal as required under Rule 105(3) of the *Court of Appeal Rules*.
7. It is clear from the record that the advocates for the appellants made two mistakes. Firstly, by recording the appeal wrongly in their diary, and then failing to file or record the hearing notice when it was served by the court. These kinds of mistakes should be avoided as they interfere with smooth flow of cases in court. Whereas we do not condone the mistakes by the Advocate, we think it would be harsh to lock out the door of justice for the applicant, considering that the application for reinstatement was filed within time.
8. In view of the foregoing, we allow the application dated December 20, 2017 and reinstate the appeal for hearing with no order as to cost.

**DATED AND DELIVERED AT NAIROBI THIS 4<sup>TH</sup> DAY OF NOVEMBER, 2022.**

**H. A. OMONDI**

.....

**JUDGE OF APPEAL**

**DR. K. I. LAIBUTA**

.....

**JUDGE OF APPEAL**

**M. GACHOKA, CIArb, FCIArb**

.....

**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

