



**Registered Trustees of Kids Alive Kenya Trust & another v ERDM
(Suing as Next Friend and Father of MCM – Minor) (Civil Appeal
E532 of 2022) [2024] KEHC 4099 (KLR) (Civ) (26 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4099 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E532 OF 2022

WM MUSYOKA, J

APRIL 26, 2024

BETWEEN

**REGISTERED TRUSTEES OF KIDS ALIVE KENYA TRUST 1ST APPELLANT
BENSON WOKABI WANJIRA 2ND APPELLANT**

AND

**ERDM (SUING AS NEXT FRIEND AND FATHER OF MCM –
MINOR) RESPONDENT**

*(Appeal from decree in the judgement of Hon. DW Mburu, Senior Principal
Magistrate, SPM, in Nairobi CMCCC No. E4037 of 2021, of 9th July 2021)*

RULING

1. I am tasked with determining a Motion, dated 22nd May 2023. It seeks leave for the 2nd appellant to file a medical report dated, 23rd November 2020. It is averred that the trial court had not considered the submissions by the appellants, and it did not have the benefit of seeing and considering the said medical report. It is averred that the said medical report had been mistakenly left out of the documents that the appellants were to rely upon at the trial.
2. The respondent has reacted to that request, by an affidavit in reply, by stating that that evidence was in the possession of the appellants at all times during the trial, and the appellants are trying to cure their inactions at the trial, by belatedly introducing the evidence on appeal. He argues that introduction of that evidence at this stage would jeopardise his case. He states that no explanation has been given for the failure to present that evidence at the trial.



3. The appellate record is sketchy on whether directions were given on the disposal of the application, dated 22nd May 2023, as I am unable to trace minutes relating to such directions. I have seen submissions on record, filed by the appellants, dated 1st March 2024. I have not seen any by the respondent. The appellants argue that the appellate court has discretion to grant an order for filing of additional evidence. *Agricultural Finance Corporation v George Ochieng Ojwando & 6 others* [2018] eKLR (Kibunja, J), *Kenya Agricultural and Livestock Research Organisation v Leah Okoko & another* [2022] eKLR (Aburili, J), *Attorney General v Torino Enterprises Limited* [2019] eKLR (Waki, Kairu and Odek, JJA) and *Isaac Mwangi & another v Molyne Credit Limited & others* [2021] eKLR (Gacheru, J) are cited in support of the application.
4. The record reflects that no formal hearing was conducted, for the parties settled liability by consent, and agreed that the court determines the question of quantum based on documents that the parties had filed. The medical report that the appellants seek to introduce was not among the documents that the appellants had filed as at the date those directions were given, by consent of the parties, and the appellants have conceded as much. Their case is that the minor respondent had been seen by their doctor for a second medical report, which fact is acknowledged in the judgement of the trial court.
5. I hold a dim view of the discretion to accommodate incompetence and lethargy by parties who, for no demonstrable and justifiable reason, fail to place relevant documents before the trial court, only to rush to the appellate court and seek accommodation, while suggesting that the trial court was somewhat to blame for their shortcomings. It is a revisionist approach to litigation, which prejudices the other party, who had diligently worked hard to ensure all its documents were on record on time. It encourages sloth and incompetence .
6. However, as there is precedence, from no less that the Court of Appeal, I have no option, but to bent to the same. I shall, most reluctantly, accordingly grant the said Motion, as prayed. Let the said document be filed within 14 days. Costs shall abide the outcome of the appeal.

DELIVERED DATED AND SIGNED AT BUSIA THIS 26TH DAY OF APRIL 2024

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Keiro, instructed by Kamotho Njomo & Company, Advocates for the appellants.

Mr. Munyoki, Advocate for the respondent.

