



**Amref Health Africa v Andaya (Civil Appeal 159 of 2023)
[2024] KEHC 7984 (KLR) (28 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7984 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL 159 OF 2023
RE ABURILI, J
JUNE 28, 2024**

BETWEEN

AMREF HEALTH AFRICA APPELLANT

AND

BISHOP OWIRA ANDAYA RESPONDENT

*(Arising from the Judgment and decree of Hon. G. C. Serem RM
in Kisumu SCC No. 97 of 2023 rendered on 27th July 2023)*

RULING

1. The application dated 20th June 2024 is certified urgent.
2. I have perused the grounds and affidavit in support thereof sworn by Emily Adhiambo Nyangano. I have also perused the annexures which include the order extending time to appeal which order was granted by consent and which consent also allowed a conditional stay of execution of decree in the lower court.
3. I have also considered the consent filed into this court dated 13th February 2024 which was to be adopted reinstating the appeal herein as struck out for reasons that it was filed out of time without leave of court, on 24th November 2023.
4. I observe that it was the Appellant's counsel who failed to annex copy of order extending time for filing of the appeal from SCC No. E097 of 2023, the decision being that of 26th July 2023.
5. That being the case, I find that the Appellant should not suffer the injustice occasioned by its counsel which was by negligent omission of the order extending time for filing of the appeal and even granting stay of execution of decree pending appeal, all by consent of both parties.



6. Accordingly, I hereby exercise discretion and save on time and resources since the Respondent had already consented to reinstatement of the appeal as struck out, I hereby set aside, review and vacate the proceedings and orders issued on 24th November 2023 striking out the appeal and substitute it with an order reinstating this appeal for hearing on merit.
7. In addition, as the stay pending appeal was by consent, I hereby reinstate the conditional order of stay of execution of decree pending the hearing and determination of this appeal, as per the consent order of 21st September 2023.
8. As all these facts were within the knowledge of the Respondent, I order each party to bear their own costs of the application.
9. I direct the Appellant in the reinstated appeal to file and serve a record of Appeal together with written submissions within 21 days of today.
10. The Respondent will have 14 days of the date of service to file and serve written submissions.
11. Mention on 23rd September 2024 to fix a Judgment date.
12. The Registry to call for the lower court file forthwith for admission of the appeal.
13. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 28TH DAY OF JUNE, 2024.

R. E. ABURILI

JUDGE

