

**Uwowo Savings and Credit Society Limited v Agasa (Suing as Administrator
of the Estate of Collins Jumba) (Miscellaneous Civil Application
E003 of 2021) [2023] KEHC 2715 (KLR) (24 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2715 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
MISCELLANEOUS CIVIL APPLICATION E003 OF 2021**

WM MUSYOKA, J

MARCH 24, 2023

BETWEEN

UWOWO SAVINGS AND CREDIT SOCIETY LIMITED APPLICANT

AND

**ERICK ALUMASA AGASA (SUING AS ADMINISTRATOR OF THE ESTATE OF
COLLINS JUMBA) RESPONDENT**

RULING

1. The application for determination is dated January 18, 2021. It principally seeks stay of execution of a judgment, in Vihiga PMCCC No. 74 of 2019, of July 30, 2021, pending appeal, and leave to file appeal out of time.
2. The applicant avers that the judgment was delivered on notice, and it was not notified of its delivery, and only got to know of its existence when it received a notice of taxation. It says that delay in filing appeal was occasioned by that. It contends that liability and quantum, as assessed by the court, were excessive, and that the proposed appeal raises triable issues.
3. In response, the respondent argues that the application was bereft of merit, for 5 months had lapsed between date of delivery of judgment and the filing of the application.
4. Directions were given on March 10, 2022, for disposal of the application by way of written submissions. Both sides have filed their respective written submissions. I have read through them and noted the arguments.
5. I note that the respondent does not controvert the submission that the judgment was delivered on notice. It is not indicated that existence of the judgment was brought to the attention of the applicant by the respondent. Of course, parties have a duty to follow up on their cases in court, but the opposite side also have a duty to notify the other side of existence of any judgment or decree or order.
6. The applicant is entitled to its day in court. I note that the memorandum of appeal discloses reasonable and arguable grounds. I am persuaded that this is a proper case for grant of the orders sought.



Consequently, I do hereby allow the application dated January 18, 2021, subject to half of the decretal amount being deposited in court within 30 days. Leave to appeal is for 30 days.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA ON THIS 24TH DAY OF MARCH 2023

WM MUSYOKA

JUDGE

Erick Zalo, Court Assistant.

Ms. Tesot, instructed by Kanyi Kimondo & Company, Advocates for the applicant.

Ms. Anono, instructed by Mukisu & Company, Advocates for the respondent.

