



**Mutura & another v Kariuki (Suing as the Legal Representative  
of the Estate of Martin Kairu Nganga - Deceased) (Civil Appeal  
E048 of 2021) [2024] KEHC 10367 (KLR) (13 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10367 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL APPEAL E048 OF 2021  
DO CHEPKWONY, J  
AUGUST 13, 2024**

**BETWEEN**

**JOHN KURIA MUTURA ..... 1<sup>ST</sup> APPELLANT**

**PETER MUTHEE MUTURA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**CECILIA MUTHONI KARIUKI (SUING AS THE LEGAL REPRESENTATIVE  
OF THE ESTATE OF MARTIN KAIRU NGANGA - DECEASED) RESPONDENT**

**RULING**

1. Before the court for determination is the Notice of Motion application dated 22<sup>nd</sup> November 2023 filed pursuant to Order 45 (1), 50(6) and 51 (1) all of the Civil Procedure Rules, Section 1A, 1B, 3A and 95, all of the Civil Procedure Act. It seeks the following orders:
  - a. Spent.
  - b. Spent.
  - c. That pending the hearing and determination of the Appeal interpartes a stay of execution of the judgment and /or Decree issued on 8<sup>th</sup> April, 2020 in Gatundu CMCC No. 356 of 2018 and all consequential orders and proceedings thereto be and is hereby issued and/or granted.
  - d. Spent.
  - e. That the Appellant's Appeal filed herein being Kiambu HCCA no. E048 OF 2021 be and is hereby reinstated to be heard and determined on merit and not procedural technicalities.



- f. That pending the hearing and determination of this application the auctioneer tax their costs dated 8<sup>th</sup> November, 2023 amounting to Kshs 126,148.00 as per the warrants of attachment and sale dated 8<sup>th</sup> November, 2023.
- g. That a period of sixty days (60) be granted to the Appellants to file and serve their Record of Appeal herein be and is hereby enlarged and/or extended to enable the Appellants fully comply.
- h. That the Honourable court do make any such further and/or other orders and issue any other relief it may deem fit to grant in the interest of justice.
- i. That the costs of this Application abide the outcome of the

### **Appeal.**

2. The Application is based on the grounds on the face of it and the Supporting Affidavit of Martha Mugo sworn on 22<sup>nd</sup> November, 2023. The Application has been opposed through the Replying Affidavit of Cecilia Muthoni Kariuki sworn on 4<sup>th</sup> December, 2023.
3. Before delving into the merits of the application on reinstatement of the appeal, the chronology of events of this Appeal is important. The trial court delivered the impugned Judgment on 8<sup>th</sup> April 2020. The appeal was initiated vide a Memorandum of Appeal which was filed on 30<sup>th</sup> March, 2021, On 5<sup>th</sup> May, 2022, the court issued directions on the appeal and its disposal where the Appellant was directed to file and serve the Record of Appeal and written submissions within 45 days while the Respondent was to file and serve her written submissions thirty (30) days of being served by the Appellant.
4. When the matter was placed before the Deputy Registrar for parties to confirm compliance with the said directions/orders, the Appellant's Counsel sought for leave of thirty (30) more days for them to comply and the court issued another mention date of 6<sup>th</sup> December, 2022 on which date there was no appearance or representation by either party. The Deputy Registrar then issued a Notice to Show Cause why the Appeal should not be dismissed for want of prosecution upon the parties and fixed the same for mention on 17<sup>th</sup> April, 2023 but on that date, the court was on leave.
5. The matter was then fixed for mention 20<sup>th</sup> June, 2023 on but again there was no appearance from either party. The court then proceeded to dismiss the Appeal for want of prosecution pursuant to Order 42 Rule 35 of the Civil Procedure Rules upon noting that the matter had been listed for the attention of the parties. This dismissal prompted the Appellant to file the present application seeking reinstatement of the Appeal and stay of execution order among other orders.
6. The Appellants are urging the court to be guided by the provisions of Article 159 (2)(d) of the Constitution of Kenya, 2010 which provides that:-
 

“In exercising judicial authority, the courts and tribunals shall be guided by the following principles –

  - (d). Justice shall be administered without undue regard to procedural technicalities;
7. It is trite law that where there is an express provision of the law, the same must be adhered to and cannot be ignored or disobeyed and thereafter termed as a procedural technicality. From the conduct of the Appellants, it is clear that they have not shown/demonstrated interest in prosecuting the appeal for the reason that since the issue of directions on disposal of the appeal on 5<sup>th</sup> May, 2020, there was no



activity by either party in have the appeal prosecuted, hence the unreasonable delay. This delay cannot be said to be a mere procedural technicality. It is unfair to the Respondent who obtained Judgment in her favour on 8<sup>th</sup> April, 2020 not to enjoy its fruits due to the inactions or laxity on the part of the Appellants.

8. It is also worth-noting that the dismissal order was made on 20<sup>th</sup> June, 2023 and the Appellants filed this application 23<sup>rd</sup> November, 2023 wherein there isn't any explanation on the delay. It is trite that litigation must come to an end, hence the court rightfully dismissed the Appeal for want of prosecution due to the laxity of the Appellants and no sufficient reasons have been demonstrated or given to reinstate the same.
9. In the end, the court finds that the Application dated 22<sup>nd</sup> November, 2023 lacks merits and there is no need to address the other prayers sought in the application.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KIAMBU THIS 13<sup>TH</sup> DAY OF AUGUST , 2024.**

**D. O. CHEPKWONY**

**JUDGE**

