



Njagi & 2 others v Lineal Company Limited & another (Civil Appeal E608 of 2021) [2023] KEHC 26834 (KLR) (Civ) (22 December 2023) (Ruling)

Neutral citation: [2023] KEHC 26834 (KLR)

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

CIVIL

CIVIL APPEAL E608 OF 2021

AN ONGERI, J

DECEMBER 22, 2023

BETWEEN

KENNETH NJIRU NJAGI 1ST APPELLANT

CAROLINE NYAMBURA 2ND APPELLANT

KENSVILLE MOTORS LIMITED 3RD APPELLANT

AND

LINEAL COMPANY LIMITED 1ST RESPONDENT

GIBSON KIMANI MAINA 2ND RESPONDENT

RULING

1. This appeal was dismissed on 30/6/2023 for want of prosecution and stay orders which were granted by the trial court were vacated.
2. The appellant filed the application dated 19/9/2023 seeking to set aside the dismissal order.
3. I have considered the trial submissions filed herein.
4. The appellant/applicant stated that the matter was listed on 9/6/2023 but the same did not proceed and the same was allocated 16/6/2023 but the physical file was missing.
5. The appellant said they were not aware that the matter proceeded on 30/6/2023 until the order issued on 4/7/2023 showing the appeal was dismissed on 30/6/2023.
6. I find that the averments by the applicant have not been controverted by the respondent.
7. I allow the application dated 19/9/2023 in the following grounds;



- i. That the appellants pay the respondents thrown away costs of kshs.20,000 before the appeal is heard.
- ii. That the appeal be fully prosecuted within 90 days of this date failure to which the appeal is automatically dismissed with costs to the respondent.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 22ND DAY OF DECEMBER, 2023.

.....

A. N. ONGERI

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent

