



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ganzori v Ganzori (Family Appeal 46 of 2018)  
[2022] KEHC 12764 (KLR) (24 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 12764 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
FAMILY APPEAL 46 OF 2018  
JN ONYIEGO, J  
AUGUST 24, 2022**

**BETWEEN**

**ALI NASSORO GANZORI ..... APPLICANT**

**AND**

**ZEMA NASSORO GANZORI ..... RESPONDENT**

**RULING**

1. By a notice of motion dated November 12, 2018, Ali Nassoro Ganzori /appellant moved this court on November 14, 2018 seeking orders that;
  - a. The honorable court be pleased to enlarge the time period within which the appellant ought to have filed this appeal in Kwale Kadhi's suit Number 40 of 2017 Zema Nassoro Ganzori vs Ali Nassori Ganzori .
  - b. That this honorable court be pleased to admit out of time the applicant's memorandum of appeal annexed with
  - c. That this honourable court be pleased to provide for the costs of this application.
2. For one reason or the other, the matter remained unprosecuted for so long hence attracting court's action vide a notice to show cause dated September 3, 2021.The notice to show cause why the application could not be dismissed for want of prosecution was then fixed for hearing on October 1, 2021.
3. On that day, there was no attendance by both parties culminating to the application being dismissed. However, the appellant /applicant moved the court vide his application dated 4<sup>th</sup> October, 2021 seeking reinstatement of the application for notice to show cause. The reason given for non -attendance was that, he (applicant) was unable to connect or join virtual proceedings owing to his old age.



- Convinced by the explanation, the court allowed the application *vide* its ruling dated November 5, 2021 hence reinstated the notice to show cause application.
4. During the hearing, Ms Oweya holding brief for M/s Chala for the applicant claimed that every time the father applicant appeared before the court registry to fix a hearing date for the case, he could be advised to go home and wait hence the reason for the delay in prosecuting the application. That he has since engaged a lawyer and therefore ready and willing to prosecute the application dated November 12, 2018.
  5. On his part, the respondent opposed the application arguing that he has been coming to court severally and that he was tired of coming to court. In his view, the applicant was not serious hence not interested in prosecuting his application.
  6. From the record, the application dated November 12, 2018 and filed on November 14, 2018 is seeking leave to challenge a judgment delivered before the Kadhi's court sometime on February 28, 2019 in Succession cause No 40/2017. The application was first fixed for hearing on February 13, 2019 but none of the parties appeared. The same was again fixed for hearing on September 24, 2019 when again none of the parties turned up.
  7. A further date was given for February 12, 2020 which date the applicant turned up but the respondent was absent. On that day, there was no proof that the respondent had been served hence the court gave a further hearing date for March 18, 2020. On that date, there was no court session as no proceedings were recorded or reflected. The matter was again fixed for hearing on May 20, 2020 when none of the parties showed up. The matter was then stood over generally. The record again shows that the file was once again placed before the trial judge on July 28, 2020 but none of the parties was present. The court then made remarks for parties to move the court when ready. Since then, parties did not move the court until the court issued the notice to show cause.
  8. However, I have noticed that the court directed issuance of notice to show cause on March 5, 2021 yet the last action was recorded on July 28, 2020. Pursuant to order 42 rule 35 of the [Civil Procedure Rules](#), one year had not lapsed to warrant issuance of a notice to show cause. On this ground alone, the notice to show cause was prematurely issued as the time had not matured.
  9. It is trite that a court has inherent powers to vary or set aside its decision, directions or orders even *suo motto* if there is sufficient cause to warrant such action in the interest of justice so long as the same does not amount to sitting on an appellate capacity on its own decision or orders.
  10. Without going to the merits of the application dated 12<sup>th</sup> November 2020, the direction for notice to show cause is hereby set aside *suo motto* and the applicant therefore granted an opportunity to prosecute the application dated November 12, 2018 for determination on merit. hearing of the application dated November 12, 2018 on September 27, 2022.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 24<sup>TH</sup> DAY OF AUGUST, 2022**

**J. N. ONYIEGO**

**JUDGE**

