



**Waweru v Julius (t/a States High School & Deliverance International
Centre Church) (Environment and Land Appeal 18 of 2022)
[2023] KEELC 21968 (KLR) (30 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21968 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL 18 OF 2022
MD MWANGI, J
NOVEMBER 30, 2023**

BETWEEN

MOLLY NDUATA WAWERU APPLICANT

AND

**PASTOR AGANI M JULIUS (T/A STATES HIGH SCHOOL & DELIVERANCE
INTERNATIONAL CENTRE CHURCH) RESPONDENT**

*(In respect of the Applicant's Application dated 31st July 2023
seeking to reinstate the appeal dismissed for want of prosecution)*

RULING

Background

1. What is coming up for determination is the Applicant's Notice of Motion Application seeking for orders that the Applicant's appeal which was dismissed on 22nd May 2023 for want of prosecution be reinstated. Further that the costs of the application abide the decision of the intended appeal.
2. The application is premised on the grounds on the face of it as well as the Supporting Affidavit of Livingstone Maina Ombete, deponed on the 31st July 2023.
3. The Applicant avers that the appeal was initially filed in the High Court at Nairobi where it had been allocated a number, HCCA E067 of 2022. The appeal was however transferred to this court by an order of Hon. Justice Serگون of 15th August 2022. The Applicant was therefore waiting to be informed by the court the new file number allocated to the appeal to enable him take appropriate action. When the information was not forthcoming as expected, the Advocate for the Appellant deposes that he sent a representative to the court's registry to find out the position of the appeal. To his dismay, he was



informed that the appeal had been dismissed on 22nd May 2023 for want of prosecution. That is what prompted him to file this application.

4. The Learned Advocate owns up the error on his part in waiting for the court to communicate to him without keenly following up the matter. He pleads with the court not to penalize his client for his mistake as the Advocate.
5. Despite service which was confirmed by the affidavit of service on record, the Respondent did respond to the application by the Appellant.

Issues for determination

6. The sole issue for determination is whether the Appellant's application is merited.

Analysis and determination

7. From my perusal of the court record, it is apparent that there was a communication breakdown between the court and the Appellant after the file was transferred to this court from the High Court. Though the Advocate for the Appellant takes responsibility for the error, I do not think he was entirely to blame.
8. Mistakes and blunders shall continue to be made from time to time, but the fact that a mistake has been made should not drive a Party away from the seat of Justice. In the case of *Philip Keiptoo Chemwolo & another v Augustine Kubende* (1986) eKLR, the Court observed as that:

“Blunders will continue to be made from time to time and it does not follow that because a mistake has been made that a party should suffer the penalty of not having his case determined on its merits. I think the broad equity approach to this matter is that unless there is fraud or intention to overreach, there is no error or default that cannot be put right by payment of costs. The court, as is often said, exists for the purpose of deciding the rights of the parties and not for the purpose of imposing discipline....”

9. Based on the foregoing and minded to avoid injustice or hardship resulting from inadvertence or excusable mistake, I allow the Appellant's application herein and reinstate the appeal. The costs of the application shall abide the decision of the appeal.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH DAY OF NOVEMBER 2023.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Ombete for the Appellant.

N/A for the Respondent.

Court Assistant – Yvette.

M.D. MWANGI

JUDGE

