



REPUBLIC OF KENYA



**Karirimbi & 3 others v Gachoki (Environment and Land Appeal  
6 of 2018) [2022] KEELC 3019 (KLR) (27 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3019 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA  
ENVIRONMENT AND LAND APPEAL 6 OF 2018**

**EC CHERONO, J**

**MAY 27, 2022**

**BETWEEN**

**HARUN WACHIRA KARIRIMBI ..... 1<sup>ST</sup> APPELLANT**

**JAMES MURIITHI KARIRIMBI ..... 2<sup>ND</sup> APPELLANT**

**JOSEPH MURIUKI KARIRIMBI ..... 3<sup>RD</sup> APPELLANT**

**JAMLECK KIBUTI KARIRIMBI ..... 4<sup>TH</sup> APPELLANT**

**AND**

**JACOB MACHAMBA GACHOKI ..... RESPONDENT**

**RULING**

1. The applicant filed a Notice of Motion dated May 7, 2021 seeking the following orders: -
  - a. That the honourable court be pleased to dismiss the appeal for want of prosecution.
  - b. That the cost of the application and that of the Appeal be granted to the respondent.
2. The application is premised on the grounds set out on the face of the application and the affidavit of the Applicant's counsel Munene Muriuki.
3. The appellants opposed the application by way of grounds of opposition dated May 27, 2021.
4. When the application came up for hearing on January 20, 2022, the parties agreed to have the same disposed of by way of written submissions. The applicant filed his on February 14, 2022 while the appellants filed theirs on February 17, 2022.



#### **APPLICANT’S CASE AND SUBMISSIONS: -**

5. The applicant’s case is that the appeal was filed on January 8, 2017 and was admitted on the May 23, 2018.
6. He stated that the appellants have not filed the record of appeal two years eleven months down the line thereby prejudicing him as he cannot enjoy the fruits of the judgment.
7. He stated that he had invited the appellants for mention on the October 1, 2019 before court but neither the appellant nor the advocate appeared indicating that they have lost interest in the appeal.
8. He submitted that the appellants having flaunted all the provisions of the Civil Procedure in as far as the appeal is concerned and that failure to file the record of appeal is a good ground for dismissal of the appeal with costs.
9. He submitted that lack of interest in the appeal is demonstrated by the fact that even after filing the current application, the appellants never filed the record of appeal.
10. He prays that the appeal be dismissed for want of prosecution.

#### **APPELLANTS’ CASE AND SUBMISSIONS:**

11. The appellants’ case is that directions under Order 42 (13) of the *Civil Procedure* have not yet been given hence the application is premature, misconceived, frivolous, vexatious and/or otherwise an abuse of the court process.
12. They stated that the period from December, 2019 to date is characterized by Covid-19 pandemic which rendered the ordinary functions of business fearful and impractical and should not be computed in factoring the issue of time under Order 42 rule 35 (1).
13. They submitted that the application is premature and lacks merit.
14. They further submitted that the ordinary course of work was seriously interfered with by the covid-19 virus, the delta variance and now the omicron variance and thus it is unreasonable to have expected the appellant to defy the ministry of health guidelines to combat the pandemic by bugging the court with request for hearing dates.
15. They submitted that these are dangerous and tough times and prayed for indulgence. They prayed that the application be disallowed and that directions be granted that the appeal be disposed of by written submissions to be filed within 7 days.

#### **ANALYSIS: -**

16. I have considered the application, grounds of oppositions, the parties’ rival submissions and the applicable law.
17. Order 42 Rule 35 of the *Civil Procedure Rules* provides as follows: -

(1) Unless within three months after the giving of directions under rule 13 the appeal shall have been set down for hearing by the appellant, the respondent shall be at liberty either to set down the appeal for hearing or to apply by summons for its dismissal for want of prosecution.



- (2) If, within one year after the service of the memorandum of appeal, the appeal shall not have been set down for hearing, the registrar shall on notice to the parties list the appeal before a judge in chambers for dismissal.

18. This appeal was admitted for hearing on May 31, 2018 by the Deputy Registrar. From the Notice dated May 31, 2018 the Deputy Registrar gave directions for the Appellants to comply with: -
- a. Order 42 rule 13 (4) a, b, c, d, e and f of the Civil Procedure Rules, i.e. Preparation of the Record of Appeal.
  - b. Filing of the record of appeal.
  - c. Serving the respondents, filing the affidavit of service and fixing for directions before the Hon. Judges.....
19. There is no indication that the appellants have complied with the above directions by the Deputy Registrar. The Appellants have also not explained their failure to comply with the said directions.
20. The applicant has stated that he fixed the matter for mention on October 15, 2019 and that neither the appellants nor their Advocate appeared in court. I have perused the records of the court and confirm that that the appellants were indeed served but did not appear in court on the said date.
21. Going by the explanation given by the respondent that Covid-19 interrupted normal court operations, it is common knowledge that in as much as there was interruption of the normal court operations due to the pandemic, court stations countrywide continued to operate by handling matters virtually as per the various practice directions that were issued by the Honourable Chief Justice of the Republic of Kenya in the year 2020.
22. For avoidance of doubt, this honourable court continued to conduct matters while observing the Covid-19 guidelines issued by the Ministry of Health.
23. From the forgoing, it is indicative that the appellants are indolent in prosecuting their appeal. As a court of equity, this honourable court does not aid the indolent but the vigilant.
24. After filing the Memorandum of Appeal, it is as clear as the day is from the night that the appellants went to slumber. They clearly lost interest. The respondent therefore cannot be kept away from enjoying the fruits of his judgment.

**CONCLUSION: -**

25. In conclusion, I find that the application dated May 7, 2021 has merit and the same is allowed as prayed. Consequently, this appeal is hereby dismissed for want of prosecution with costs to the applicant. It is so ordered.

**RULING READ AND SIGNED IN THE OPEN COURT AT KERUGOYA THIS 27<sup>TH</sup> MAY, 2022.**

.....

**HON. E.C. CHERONO**

**ELC JUDGE**

**In the presence of;**

1. Mr. Macharia Wambui H/B for Munene Muriuki for Respondent
2. Appellant/Advocate - absent



3. Kabuta C/A---present.

