



**Asis v Leting (Environment and Land Appeal 6 of 2021)  
[2022] KEELC 3151 (KLR) (9 June 2022) (Judgment)**

Neutral citation: [2022] KEELC 3151 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET  
ENVIRONMENT AND LAND APPEAL 6 OF 2021  
MN MWANYALE, J  
JUNE 9, 2022  
(FORMERLY ELDORET E & L CASE CIVIL APPEAL NO 1 OF 2014)**

**BETWEEN**

**EDWIN KIPCHUMBA ASIS ..... APPELLANT**

**AND**

**ELIZABETH LETING ..... RESPONDENT**

**JUDGMENT**

1. Vide a Ruling dated 21<sup>st</sup> November, 2021, the Court granted leave to Beatrice Chepchirchir Ochogo to be substituted in this Appeal and further ordered the reinstatement of this Appeal which had otherwise abated.
2. Upon reinstatement of the Appeal, the Appellant Advocate was recorded on 9/2/2022 as indicating that he intended to file an application to amend the Memorandum of Appeal. On 24/2/2022 the said application dated 5/2/2022 was filed and the Application was slated for hearing on 16/3/2022.
3. On 16/3/2022, the Court gave directions on filing of written submissions on the application dated 5/2/2022 with each party given 10 days to file the same, and the matter was slated for a mention on 4/4/2022 to take a ruling date in respect of the application dated 5/2/2022.
4. On 4/4/2022, the Respondent's Advocate conceded to the application dated 5/2/2022, hence the said application was allowed, in term of the annexed draft Memorandum of Appeal. The Court further directed the Appellants Advocates to file the Amended Memorandum of Appeal within 10 days from that day, the Appellant was also required to file written submissions on the Appeal within 14 days after filing of the Amended Memorandum of Appeal, and the Respondent was to file their submissions within 14 days after service of the Appellant's submissions. Both sets of the submissions were required to be on record by 16<sup>th</sup> May 2022 so that Judgement could be delivered on 9<sup>th</sup> June 2022.



5. However by 16<sup>th</sup> May 2022 none of the parties had filed their submissions although the Respondent filed his submissions later on 31<sup>st</sup> May 2022, but the Appellant did not file the submissions.
6. As the Appeal was to proceed by way of written submissions the failure by the Appellant to file submissions means that the appeal herein was not prosecuted.
7. The Court has agonised over the fate of this appeal noting that it had issued timelines for disposal of the appeal by way of written submissions. The Appellant did not even file the amended Memorandum of Appeal yet leave had been granted. Noting that the Original Appellant had died, the amended Memorandum of Appeal pursuant to the orders of substitution was to revive the appeal.
8. That was not done, and the Court is now faced with an appeal that has not been prosecuted and wonders what to do with same noting that no application for extension of time lines has been filed since the timelines lapsed on 16/5/2022, yet the Appellant Advocates knew that the judgment had been reserved for 9<sup>th</sup> June 2022.
9. The Court has had chance to look at what other Courts have done to similar situations. In Civil Appeal 220/2019/2021 KECA 340 between Elaki –vs- District Land Registrar Vihiga and Another, in upholding the decision to dismiss a petition for failure to file submissions, the Court of Appeal observed as follows;

"Despite the clear orders of the Court, the appellant's Counsel failed the written submissions. It is a worrying trend when Counsel as officers of the Court blatantly choose to disregard Court orders of this nature that are intended to further interests of justice by expecting Court proceedings..... Having regard to the circumstances of this case, we are not persuaded that..... the failure to file written submissions was in any way explained. In addition he take the view that the Appellant cannot be absolved from the responsibility of ensuring that his counsel took the steps necessary to prosecute his case. As a consequence we cannot fault the learned Judge for declining to set aside the order for dismissal."

Similarly in *Boit –vs- Ali & Another* (civil Appeal No. 50 of 2015 (2021) KECA 270 KLR – the Court of Appeal states:-

"the Court indulged the Appellant twice to file his written submissions. No reason was given for non-compliance. The purported submissions were filed on the day when judgement was scheduled for delivery. The appellant was well aware all along the Order to file his submissions and of the date set for delivery of judgment.

In these circumstances, the Appellant cannot be heard to accuse of relying on technicalities. The Court has an equally compelling constitutional obligation to ensure that justice is administered without undue delay.

The Appellant was plainly slothful and dilatory and cannot blame the Court for what befell him."

Taking cue from the above decisions, the inevitable conclusion is that this appeal be and is hereby dismissed with costs.

Orders accordingly.

**DATED AND DELIVERED AT KAPSABET THIS 9<sup>TH</sup> DAY OF JUNE, 2022.**

**HON. JUSTICE M. N. MWANYALE**

**JUDGE.**



In the presence of;

Mr. Otieno for the Appellant

Mr. Kiboi for the Respondent

