



**Nkonge & 3 others v Mugambi (Environment and Land Appeal  
13 of 2023) [2025] KEELC 1012 (KLR) (5 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1012 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI  
ENVIRONMENT AND LAND APPEAL 13 OF 2023  
LN MBUGUA, J  
MARCH 5, 2025**

**BETWEEN**

**TIMOTHY NKONGE ..... 1<sup>ST</sup> APPELLANT  
MOSES KAIMENYI ..... 2<sup>ND</sup> APPELLANT  
LAWRENCE KOOME ..... 3<sup>RD</sup> APPELLANT  
ROSE NGUGUNE ..... 4<sup>TH</sup> APPELLANT**

**AND**

**JOHN MUGAMBI ..... RESPONDENT**

**RULING**

1. Before me is a notice of motion application dated 27.1.2025 in which the appellants are seeking orders for the reinstatement of the appeal which was dismissed on 16.9.2024. They argue that the suit was dismissed for want of prosecution based on the application dated 31.3.2023 filed by the respondent. They aver that they intend to prosecute the matter with diligence.
2. The respondent opposed the application vide a replying affidavit dated 14.2.2025 where he argues that he filed the application dated 31.3.2023 for the dismissal of the appeal as the matter had delayed for several years. The respondent gave a chronology of events leading to the dismissal of the appeal including the fact that the appellants were given sufficient time to get legal representation. That on 19.6.2024, the appellants' advocate was in court and was given more time to regularise his appointment. He was also served with the application in open court and the matter was fixed for hearing of the application on 29.7.2024. Come the said date and the advocate for the appellant was yet to regularise his appointment, hence the matter was given a mention date for directions on 16.9.2024. Again they had not complied, hence the application to dismiss the appeal was allowed.



3. A perusal of the record reveals that the respondents had filed an application dated 31.3.2024 for the dismissal of the appeal which was allowed on 16.9.2024. The question falling for determination is whether this appeal should be reinstated.
4. In *Mwangi S. Kimenyi vs Attorney General and Another* [2014] eKLR the court stated that;  
“The decision whether a suit should be re-instated for trial is a matter of justice and it depends on the facts of the case.....”.
5. While in *Gold Lida Limited vs NIC Bank Ltd & 2 other* (2018) eKLR it was held that:  
“The overriding objective of our constitutional and statutory framework on civil procedure is to achieve substantive justice to the litigants.....”.
6. This court being a court of law as well as a court of record finds that from the time the application dated 31.3.2023 was filed, numerous fundamental factors have affected the prosecution of the matter including; the transfer of the suit from Nyeri ELC to Nanyuki ELC, the advocate for the appellants had also ceased acting through their application dated 17.10.2023 which was allowed on 14.12.2023, that directions on the prosecution of the main suit were active (see proceedings of 15.5.2024) and so were directions on the prosecution of the application dated 31.3.2024 (see proceedings of 19.6.2024 when the said application was given a hearing date of 29.7.2024).
7. Of great importance are the proceedings of 29.7.2024 where the court gave the following directions; “Mention on 16.9.2024 for directions”. Since the matter was listed for mention and not for the hearing of the application dated 31.3.2023, I find that the dictates of justice demand that the suit be reinstated. To this end, I make reference to the case of *Nilesh Premchand Mulji Shah & another t/a Ketan Emporium v M.D. Popat and others & another* [2016] KEHC 6855 (KLR) , where the court stated that;  
“Courts are assigned the unfettered discretion where it is so prescribed, in order to salvage justice from defeat, to make such interlocutory orders as appear to the court to be just and convenient”.
8. Thus the application dated 27.1.2025 is allowed and each party is to bear their own costs of the application.

**DATED, SIGNED AND DELIVERED AT NANYUKI THIS 5<sup>TH</sup> DAY OF MARCH 2025 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:

Kimaru Kibuchi for Respondent

Onaya Ombere for Applicant absent

Court Assistant: Nancy Mwangi

