



**Amunabi & another v Demba (Environment and Land Appeal
E028 of 2021) [2025] KEELC 4406 (KLR) (11 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4406 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND APPEAL E028 OF 2021**

**MAO ODENY, J
JUNE 11, 2025**

BETWEEN

GOODY RUHU AMUNABI 1ST APPELLANT

GRACE VINCENT OPONDO 2ND APPELLANT

AND

DOROTHY DEMBA RESPONDENT

RULING

1. This ruling is in respect of a Notice of Motion dated 17th January, 2025 by the Appellant/Applicants seeking the following orders:
 - a. Spent
 - b. Spent
 - c. That the honourable court be pleased to reinstate the appeal herein and allow the appellant to prosecute the said appeal to conclusion.
 - d. That costs of this application be provided for.
2. The application was supported by the affidavit of P. Kimani Ndichu, advocate who deponed that on 14th October, 2024, they attended court for mention and the court gave directions that they follow up on the Tribunal file to enable them to prosecute the appeal. Counsel deponed that the court proceeded to give a date for further mention on 30th October, 2024 however he did not attend court.
3. The Applicants' counsel deponed that the court gave a date of 5th December, 2024 which was served on them by the Respondent however, the clerk failed to diarize the same. He further deponed that the court dismissed their appeal on 5th December, 2024 with costs. It was his deposition that the tribunal file has not been availed from the registry however the record of appeal has already been filed and



that the Applicants have been willing to prosecute the appeal and he urged the court to allow the application.

4. The Respondent filed a Replying Affidavit sworn on 30th January, 2025 and deponed that the application is an abuse of the court process. It was her deposition that the Applicants having filed the record of appeal on 6th January, 2022, being more than three years ago, have not demonstrated any substantial steps taken to prosecute their appeal. She deponed that with the advancement of technology, simple due diligence on the Case Tracking System (CTS) would have revealed the status of the matter.
5. Kimani Ndichu, counsel for the Applicants filed a Supplementary Affidavit sworn on 4th January, 2025 and deponed that despite the orders having been made on 14th October, 2024 for the Business Premises Rent Tribunal (BPRT) to avail the original record, it was not until the 4th day of February, 2025 when the Deputy Registrar of the Environment and Land Court Nakuru wrote to the Chairman of BPRT to avail these records. Counsel deponed that the Appellants are willing to abide by any condition that this honourable court may direct to reinstate the appeal.

Appellant/Applicants Submissions

6. Counsel for the Appellant/Applicants filed submissions dated 12th February, 2025 and submitted that this Honourable Court has jurisdiction to set aside its orders dismissing the appeal and order that the appeal be reinstated and relied on the case of Esther Wamaitha Njihia & 2 others vs Safaricom Ltd.
7. Counsel submitted that the Respondent will evict the Appellants if the appeal herein is not reinstated and that the excusable mistake of counsel should not be visited upon an innocent litigant. Counsel cited the case of Philip Keipto Chemwolo & Another vs Augustine Kubende [1986] KECA 87 (KLR) and urged the court to allow the application.

Respondent's Submissions

8. Counsel for the Respondent filed submissions dated 21st February, 2025 and identified the following issues for determination:
 - a. Whether the Applicants are entitled to an order for reinstatement of their appeal?
 - b. Who should bear the costs of this application?
9. On the first issue, counsel submitted that reinstatement of the instant appeal would not go towards avoiding an injustice or hardship resulting from inadvertence but to assist litigants who have deliberately sought to obstruct and/or delay the course of justice.
10. Counsel relied on the cases of Lawrence Kamugane & Another vs Stephen Mwangi Mugo [2019] KEHC 5358 (KLR), Richard Ncharpi Leiyagu vs IEBC & 2 Others [2013] KECA 282 (KLR), Cecilia Wanja Waweru vs Jackson Wainaina Muiruri & Another [2014] KECA 492 (KLR) and Tana and Athi Rivers Development Authority vs Jeremiah Kimigho Mwakio & 3 others [2015] KECA 674 (KLR).
11. Counsel submitted that the parties were on 8th December, 2022 directed to prepare the appeal and set it down for hearing. Counsel stated that the Respondent prepared a reply to the Memorandum of Appeal on 8th March 2023 and by 8th May, 2023, the Appellants had only filed a record of appeal. Counsel further submitted that on 29th May, 2023 the court directed that the Tribunal's record be availed which has not been availed close to two years down the line.



12. It was the Respondent’s counsel’s submission that the Appellants’ counsel last attended court on 8th May, 2023 and only appeared on 14th October 2024 on a mention date requested by the Respondent’s then newly appointed advocates. Counsel submitted that by 5th December, 2024 there was no compliance with the court’s directions of 14th October, 2024 for availing the Tribunal’s record within seven days. On the second issue, counsel relied on Section 27 of the *Civil Procedure Act* and urged the court to award the Respondent costs.

Analysis and Determination

13. The issue for determination is whether this court should reinstate the appeal herein and allow the appellant to prosecute the appeal to conclusion. The matter came before this court on 29th May, 2023 and the court directed as follows: “The BPRT Record shall be availed to enable this court handle this appeal.”
14. The matter came before this court on 14th October, 2024 and the court directed as follows: “Record from the BPRT to be availed within 14 days. Appellant to serve record of appeal on the Respondent within 7 days.”
15. The matter came up in court on 30th October 2024 and the court directed as follows: “This matter has been mentioned severally with no progress. The Appellant is given 14 days to serve the record of appeal and avail the BPRT records failure to which the appeal stands dismissed.”
16. The matter came up again in court on 5th December, 2024 in the presence of both counsel. The Respondent’s counsel confirmed that they were served with the record of appeal but the BPRT file was still missing. The court subsequently dismissed the appeal with costs.
17. In the case of *Gatiu and Gatiu & another v Wamutu* [2025] KECA 818 (KLR) the Court of Appeal pronounced itself as follows at paragraph 26, 27 and 33:

“A valid record of appeal is the bedrock of appellate proceedings. Without it, the court cannot fairly or legally assess the correctness of the decision being challenged. In this instance, the ELC correctly noted that the appellants failed to include: the award of the Thika Land Disputes Tribunal, which was the subject of the appeal; and the judgment in JR Application No. 53 of 2011, which was material to establishing whether the dispute had already been adjudicated.

The absence of the tribunal’s award meant the court could not examine what findings were made or the legal basis of the complaint. The court in the case of *Law Society of Kenya vs. Centre for Human Rights & Democracy & Others*, Petition 14 of 2013, highlighted the mandatory nature of procedural rules.....

Without the core document being appealed from (i.e., the tribunal’s award), the appeal was incompetent ab initio. Therefore, the court could not be called upon to determine an appeal when it lacked the legal foundation and supporting record. The ELC was thus right in concluding that the appeal as filed was not only incomplete but fundamentally defective and incompetent.”

18. It should be noted that it is the Respondent who has been eager to get this Appeal down for hearing. The Appellant’s counsel casually stated that he was not able to attend court but did not give the reason for non-attendance instead counsel used the old tired phrase that a mistake of counsel should not be visited on a litigant. This phrase is only applicable to genuine cases where sufficient explanation is given.



19. The court had noted that the matter was coming up severally for mention and in most cases the Appellant's counsel was never present. It is the duty of a party who moves the court for relief to follow up on the progress and the prosecution of the case. In this case the Appellant went to slumber after filing a memorandum of Appeal in 2022. The court is not a parking lot for cases where parties do not want to prosecute their cases.
20. I find that no sufficient reasons have been given to reinstate the appeal hence, this application is dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 11TH DAY OF JUNE 2025.

M. A. ODENY

JUDGE

