



**Ma ni Utheri v Pram Company Limited (Environment and Land Appeal  
33 of 2021) [2024] KEELC 711 (KLR) (14 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 711 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT RUIRU  
ENVIRONMENT AND LAND APPEAL 33 OF 2021  
BM EBOSO, J  
FEBRUARY 14, 2024**

**BETWEEN**

**MA NI Utheri ..... APPELLANT**

**AND**

**PRAM COMPANY LIMITED ..... RESPONDENT**

**RULING**

1. I have considered the application dated 5/10/2022 by the appellant. It seeks an order reinstating this appeal. It also seeks an order enlarging the time for filing the record of appeal. It also seeks an order admitting the record of appeal that was filed out of time.
2. The explanation tendered by the appellant is that there was delay in the procurement of typed and certified proceedings from the lower court. The appellant attributes the delay to the lower court.
3. The appellant opposes the application on the principal ground that the appellant has been indolent, adding that the appellant failed to extract and serve the order of this court on the Thika Chief Magistrate Court.
4. I have considered the application, the response to the application, and the parties respective submissions. I have also considered the relevant jurisprudence on the key issue in the application. The single question to be answered in this application is whether the appellant/applicant has satisfied the criteria for reinstatement of a suit or an appeal.
5. The jurisdiction which the court is invited to exercise is a discretionary one. The prevailing jurisprudence on reinstatement of suits or appeals dismissed for non-compliance is that unless there are compelling reasons, no court should lock a litigant out of the seat of justice [see *Shah v Mbogo*].
6. In the present application, the applicant has explained that the non-compliance which led to the dismissal of the appeal was occasioned by the lower court's failure to avail typed and certified copies



of the proceedings. The respondent blames the appellant for failing to promptly extract and serve the order of this court on the Thika Chief Magistrate Court.

7. Taking the foregoing into account, the court comes to the view that the interest of justice will be served if the appeal is reinstated. For the failure to promptly extract and serve the order of this court on the Chief Magistrate Court, the appellant will pay the respondent throw-away costs of the application assessed at Kshs 20,000/=.
8. In the end, the application dated 5/10/2022 is allowed in terms of prayers 2, 3 and 4. The appellant shall pay the respondent costs of the application assessed at Kshs 20,0000 within 30 days. In default, the order reinstating the appeal shall stand vacated and the appeal shall stand dismissed. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 14TH DAY OF FEBRUARY 2024.**

**B M EBOSO**

**JUDGE**

**In the presence of: -**

Mr Mathenge for the Appellant

Ms Kamande for the Respondent

Court Assistant: Hinga

