



REPUBLIC OF KENYA



**Kyuvi v Kwinga & another (Environment and Land Appeal
E004 of 2021) [2024] KEELC 6955 (KLR) (16 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6955 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT AND LAND APPEAL E004 OF 2021
TW MURIGI, J
OCTOBER 16, 2024**

BETWEEN

MULINGE PETER KYUVI APPELLANT

AND

LAWRENCE N KWINGA 1ST RESPONDENT

IMELDA N KWINGA 2ND RESPONDENT

RULING

1. This ruling is in respect of the Notice of Motion dated 24th May 2023 brought under Order 17 Rule 2 of the Civil Procedure Rules, Sections 1A, 1B and 3A of the Civil Procedure Act and Article 47 of the Constitution in which the Applicant seeks the following orders:-
 1. Spent.
 2. That the Honourable Court be pleased to set aside and/or review the orders made on 8th December 2022 dismissing the Appellant's Appeal and reinstate the same for hearing and determination.
 3. That the court do make any other order as meets the ends of justice in the circumstances of the case.
 4. That the costs of this application be in the cause.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Elizabeth Isika Advocate sworn on even date.



The Applicant's Case

3. The deponent averred that her call dropped when she was attending the hearing of the NTSC on 8th December 2022 and thereafter experienced challenges in being re-admitted to the platform. She further averred that she instructed Counsel to hold her brief who experienced challenges in following up with the proceedings as the matter was not listed in the cause list for the day. That later on she learnt that the appeal was dismissed for want of prosecution. In urging the court to allow the application, Counsel argued that the Applicant should not suffer for the mistakes of his counsel.

The Respondents Case

4. The Respondents opposed the application through the replying affidavit of A. K. Kiluva filed in court on 19th October 2023.
5. The deponent averred that the NTSC was listed on the electronic cause list for the material day. He argued that the Appellant did not file an affidavit to explain why the Appeal should not be dismissed for want of prosecution. According to the deponent, the Appellant is not diligent to prosecute his appeal as he is yet to file the record of appeal. He asserted that litigation must come to an end and urged the court to dismiss the application as the same has been brought with unreasonable delay.
6. Parties were directed to canvass the application by way of written submissions.
7. The Applicant filed his submissions dated 21/03/2024 which I have duly considered.
8. As at the time of writing this ruling, the Respondents had not filed their submissions as directed.

Analysis And Determination

9. I have carefully considered the application, the respective affidavits and the submissions by the Appellant. The record shows that on 24th November 2022, the court issued a notice to show cause why this appeal should not be dismissed for want of prosecution. Indeed, the NTSC was in the cause list for 8th December 2022. However, there are no proceedings to show that that this matter was place before me on the material day. Similarly, there are no proceedings to show that the appeal was dismissed for want of prosecution. In the circumstances, I find that the application is improperly before the court and the same is hereby struck out with no orders as to costs. The Appellant is directed to file and serve the record of Appeal within 45 days from the date hereof.

HON. T. MURIGI

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 16TH DAY OF OCTOBER, 2024.

In The Presence Of:

Parties absent

Court assistant Steve

