



REPUBLIC OF KENYA



KENYA LAW
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**Wamucii v Republic (Criminal Appeal E017 of 2021)
[2025] KEHC 215 (KLR) (21 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 215 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CRIMINAL APPEAL E017 OF 2021**

**M MUYA, J
JANUARY 21, 2025**

BETWEEN

GEORGE GICHUKI WAMUCII APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The application dated 31st July, 2024 seeks the setting aside of the orders of this court dismissing the applicants appeal for want of prosecution.
2. The main ground in this application is an attempt to explain the delay in prosecuting the appeal in the stipulated timelines.
3. It is the contention of the applicant that the counsel who had the conduct of this appeal left the firm he was working with in the month of June, 2022 and this was without handing over the files to another advocate.
4. In the case of *Shah-Vs-Mbogo & another (1967) EA 116* which was decided by the High Court Nairobi. It was held “.....applying the principle that the courts discretion to set aside an *ex parte* judgement is intended to be exercised to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake or error, but not to assist a person who has deliberately sought (whether by evasion or otherwise) to obstruct or delay the cause of justice, the motion should be refused”
5. Bearing in mind that the mistake does not appear to be that of the appellant and the courts have unfettered discretion in setting aside *ex parte* orders, I find there is need to revisit my earlier decision so as to afford the appellant the opportunity of being heard in line with the provisions of article 50 of the *constitution* as regards fair hearing.



6. Subsequently and in view of the above the fact that only the final submissions are remaining I order the reinstatement of the appeal and set aside the dismissal orders.

RULING READ AND DELIVERED IN OPEN COURT THIS 21ST DAY OF JANUARY, 2025 IN THE PRESENCE OF:-

Wanda holding brief for Juma for applicant

Miss Kaniu for the respondent

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M. MUYA

JUDGE

