



REPUBLIC OF KENYA



KENYA LAW
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**Mwangi v Murunga (Civil Appeal 37 of 2011)
[2025] KEHC 2153 (KLR) (18 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2153 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CIVIL APPEAL 37 OF 2011**

RK LIMO, J

FEBRUARY 18, 2025

BETWEEN

CHEGE MWANGI APPELLANT

AND

PAUL KAIRU MURUNGA RESPONDENT

RULING

1. Chege Mwangi, the applicant herein has moved this court through a Notice of Motion dated 18/10/2023 for reinstatement of his appeal which appeal was dismissed for want of prosecution on 22/3/2012.
2. The applicant has invoked the inherent powers of this court under Section 3A and 63(e) of the *Civil Procedure Act* and the main reasons advanced are as follows:-
 - i. That the applicant was acting in person when the suit was dismissed for want of prosecution having previously engaged the firm of Sifuna & Sifuna Advocate.
 - ii. That the Deputy Registrar issued Notice To Show Cause to the firm of Sifuna & Sifuna Advocate when the firm were no longer on record because he filed a Notice to Act in Person dated 18/11/2016.
 - iii. That he never got to know that his appeal was on 22/3/2017 since he was not informed.
3. He submits through counsel Nakitare it was unfair that his appeal could be dismissed without his knowledge. He further faults this court for dismissing his appeal before one year lapsed as provided under the provisions of Order 17 Rule 2.
4. The applicant was however unable to explain his inaction between when the appeal was dismissed on 22/3/2017 and 23/10/2023 when he filed the application now before court.



5. The respondent has opposed this application and the gist of the opposition is that this appeal was filed in 2011 and had been delayed by inaction by the appellant.
6. He contends through learned counsel Mr Kiarie that he was not served with Notice to Act in Person and that the applicant has brought this application after inordinate delay. He points out that the applicant took 6 years to move this court after his appeal was dismissed for want of prosecution.
7. He also faults the applicant for having taken no action after filing his appeal in 2011 and points out that there is no record to show that the appellant applied for proceedings or even prepared the record of appeal.
8. This court has considered this application and the response made. The applicant is seeking this court's discretion to set aside the dismissal of his appeal for want of prosecution. An applicant seeking to set aside such an order must show sufficient reasons why the exercise of court's discretion should be in his favour.
9. In this matter, it is uncontested that the appeal herein was filed on 31/5/2011.
10. It is also uncontested that by the time the appeal was dismissed for want of prosecution on 22/3/2017, the appellant had taken no action to prosecute his appeal six years down the line.
11. It is however noted from the record that when the Notice To Show Cause was issued by Deputy Registrar of this court vide a Notice dated 22/2/2017 the applicant was acting in person having filed a Notice to that effect on 18/11/2016. Though the respondent claims not to have been served, it is quite apparent that there was a Notice to act in person properly filed on record.
12. The Deputy Registrar therefore ought to have issued Notice To Show Cause to him in person and not through his former advocate who was no longer seized of the matter.
13. What obtains from the above is that the applicant was not accorded a chance to explain his indolence which was obvious given that no action had been taken to prosecute the appeal. The applicant tried offering an explanation through counsel that he was in civil jail but no evidence was tendered or affidavit to buttress the fact.
14. This court would not have granted the applicant any further chance in this appeal but for the singular reason that he was not served with Notice To Show Cause. By that procedural misstep the applicant was condemned unheard and the right to be heard is cardinal. It cannot be disregarded.
15. So while I agree with the respondent that the applicant has not given sufficient reasons to explain his inaction or indolence, his right to be heard weighs heavily in his favour. I have looked at the prejudice that the respondent is likely to suffer and find that any prejudice can be addressed by costs.
16. In the premises this court finds that the interests of justice swings in favour of allowing this application which I hereby do. The appeal is hereby reinstated on the following conditions:-
 - a. The appellant shall file the record of appeal and get appeal processed within the next 30 days.
 - b. The appellant will pay costs of this application whichever way the appeal goes. The costs shall be agreed or taxed.
 - c. The appeal shall be mentioned after 45 days for further orders/directions.

DELIVERED, DATED AND SIGNED AT KITALE THIS 18TH DAY OF FEBRUARY, 2025.

R.K. LIMO



JUDGE

Ruling delivered in absence of parties and counsels.

