



REPUBLIC OF KENYA



**KENYA LAW**  
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**Abdi v Baa (Civil Appeal E012 of 2024) [2025] KEHC 3003 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3003 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA**

**CIVIL APPEAL E012 OF 2024**

**JN ONYIEGO, J**

**MARCH 13, 2025**

**BETWEEN**

**OSMAN DABAR ABDI ..... APPELLANT**

**AND**

**FATIMA JIMALE BAA ..... RESPONDENT**

**RULING**

1. Vide a chamber summons dated 31-01-2025, the applicant/appellant moved this court pursuant to Sections 1A,1B and 3A of the CPA and order 12 rule 7 of the CPRs, seeking for; reinstatement of the appeal herein which was dismissed on 3-12-2024 for non-attendance and want of prosecution; that a stay of execution of the judgement delivered on 12-06-2024 to issue pending hearing and determination of the application herein and the subsequent appeal.
2. The application is based on the grounds set out on the face of it and the affidavit sworn by the applicant sworn by Osman Dabar who averred that his counsel's advocates' failure to turn up in court was because he was appearing at Mander court in case number E297 of 2024 Republic vs Abdihakim. It was contended that counsel tried to log in but failed to access the court. It was averred that the suit herein concerns minors who will suffer if the suit is dismissed. Despite service of the application, the respondent did not file response.
3. I have considered the application herein which is not opposed. The only issue for determination is whether the prayers sought can issue. It is trite law that the fact that an application is not opposed does not mean that it must automatically succeed. The court is duty bound to determine the same on merit. See Julius Lekakeny ole Sunkuli v Gideon Sitelu Konchellah & 2 others [2018] KECA 419 (KLR).
4. The application herein is seeking reinstatement of the appeal herein which was dismissed for want of prosecution. The applicant is seeking reinstatement on grounds that his counsel was engaged before Mander Court and that he tried to access the court but in vain. It is unfortunate that the information relayed to the court is hearsay. The concern advocate is the one who is supposed to have sworn an



affidavit detailing what transpired and not the client. He should have attached a cause list for the Mandera Court.

5. Although there is no good ground advanced to convince this court to order for reinstatement, I will exercise my discretion only on the understanding that this a matter involving minors whose best interest is at stake and that the appellant had shown willingness to prosecute the appeal by filing submissions. Indeed, it has time and again been held that counsel's mistake should not be visited on a client. See *In re the Estate of Mohamed Abdullahi Kambi (Deceased)* (Succession Cause E258 of 2021) [2024] KEHC 9657 (KLR) (Family) (15 July 2024) (Ruling) where the court held that;

“ Counsel has explained the reason for his non-attendance, and it is clear that upon learning of the dismissal, he took immediate steps to have the same reinstated. He, therefore, cannot be accused of inordinate delay. Further, Counsel's mistake should not be visited upon the client”

6. On that ground alone, the prayer for reinstatement of the appeal is allowed. As to the prayer for stay of execution, this is an afterthought as such orders were not in place when the appeal was dismissed. Further, it would not be in the best interest of the minors to introduce such orders at this stage. In any event, the applicant did not endeavor to address the court on the likelihood to suffer substantial loss as provided under order 42 rule 6 (2) of the *CPA*. To that extent, that prayer is disallowed. Parties to argue the appeal expeditiously. Costs shall be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 13 DAY OF MARCH 2025**

**J. N. ONYIEGO**

**JUDGE**

