



REPUBLIC OF KENYA



KENYA LAW
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**Balozi Housing Cooperative Society Limited v Kamandu (Civil Appeal
17 of 2019) [2025] KEHC 2706 (KLR) (Civ) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2706 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL 17 OF 2019

NW SIFUNA, J

MARCH 6, 2025

BETWEEN

BALOZI HOUSING COOPERATIVE SOCIETY LIMITED APPELLANT

AND

FLORENCE K KAMANDU RESPONDENT

RULING

1. This ruling is on the Appellant's motion dated 22nd October 2024. The same which relates to this the Appeal herein, is supported by the Supporting Affidavit of Monica W. Ndung'u sworn on 10th October 2024.
2. The Appeal was dismissed by Sergon J, on 7th October 2022; under the provisions of Order 42 Rule 35 (2) of the *Civil Procedure Rules*. Thereafter the Appellant filed an Application for stay of that dismissal order, and also sought reinstatement of the Appeal.
3. That Application was dated 12th January 2024. The same which was opposed by the Respondent, was heard by Ongeru J and a ruling was delivered on its merits, on 24th May 2024 dismissing the said Application.
4. The Appellant despite having been aggrieved by that ruling, did not Appeal it, and instead filed the instant Application; seeking review of that ruling and also a stay of that dismissal order. The effect of the sought review is the reinstatement of the Appeal. A prayer that was declined in the said ruling of 24th May 2024 (Ongeru, J).
5. I hold that there is remarkable similarity or even sameness in the two Applications. In the sense that in both, the Court has to effectively reinstate the Appeal and also allow the Appellant to file a Record of Appeal.



6. A Record of Appeal cannot be filed in a dismissed Appeal. Therefore, for a Record to be filed, the Appeal has to be alive or resurrected if it was dismissed.
7. This is a Court of equity and its equitable duty and the duty to uphold the law cannot be drowned in the craft of draftsmanship. I hold that the principle of res judicata is not just confined to suits, but also to applications.
8. This instant Application is a clever scheme to sneak back into this Court through the backdoor, an Application that was already heard and determined on merits. This is akin to this Court sitting on Appeal on its own ruling. This is unacceptable.
9. This Application therefore not only lacks merit, but is also an abuse of the court process as it is a mischievous one intended to defeat the application of the law. It therefore fails and is hereby dismissed with costs.

DATED AND DELIVERED AT NAIROBI ON THIS 6TH DAY MARCH 2025.

PROF (DR) NIXON SIFUNA

JUDGE

