



Theuri v Muki Sacco Society Limited & another (Civil Appeal E768 of 2024) [2025] KEHC 6259 (KLR) (Civ) (8 April 2025) (Ruling)

Neutral citation: [2025] KEHC 6259 (KLR)

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

CIVIL

CIVIL APPEAL E768 OF 2024

TW CHERERE, J

APRIL 8, 2025

BETWEEN

DANSON KINGORI THEURI APPELLANT

AND

MUKI SACCO SOCIETY LIMITED 1ST RESPONDENT

SUPERVIEW AUCTIONEERS 2ND RESPONDENT

RULING

1. Before this Court is the Notice of Motion dated 17th December 2024, by which the Appellants seek orders for reinstatement of the appeal which was marked as closed on 19th November 2024.
2. The application is supported by the affidavit of Daniel Ngugi Kamau, Advocate for the Appellants, sworn on 17th December 2024. He depones that the appeal was listed for mention on 19th November 2024 when he was informed the file was missing. He subsequently discovered that the Deputy Registrar had ordered the file closed due to non-appearance by either party on the mention date.
3. The Respondents neither opposed the application nor attended the hearing. Accordingly, the facts as deponed by the Appellants remain unchallenged and uncontested.
4. The sole issue for determination is whether the Appellants have demonstrated sufficient cause to warrant the reinstatement of the appeal.



5. The power to reinstate a suit or appeal dismissed or marked as closed is a discretionary power of the Court, to be exercised judiciously and upon sufficient cause being shown. As held in *Ivita v Kyumbu* [1984] KLR 441:

“The test is whether the delay is prolonged and inexcusable, and, if it is, can justice be done despite the delay.”

6. In the present case, it is not in dispute that the appeal was listed for mention on 19th November 2024, but no party was represented. The Deputy Registrar ordered the file closed. The Appellants aver that they were informed the file was missing, and only later discovered the order of closure. This account has not been controverted by the Respondent.

7. The Appellants acted with reasonable promptness. The motion was filed on 17th December 2024, within one month of the closure showing diligence and a clear intent to prosecute the appeal.

8. The Court of Appeal in *Philip Keipto Chemwolo & Another v Augustine Kubende* [1986] eKLR observed:

“Blunders will continue to be made from time to time, and it does not follow that because a mistake has been made, a party should suffer the penalty of not having his case heard on merit.”

9. Similarly, in *Shah v Mbogo* [1967] EA 116, the Court held that the discretion to set aside should be exercised:

“...to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake or error.”

10. In *Mwangi v Kenya Airways Ltd* [2003] KLR 486, the court emphasized that:

“The courts exist for the purpose of dispensing justice, and should not place undue barriers which may hinder determination of matters on merit.”

11. The right to a fair hearing, enshrined in Article 50(1) of *the Constitution*, guarantees every person the right to have their dispute resolved in a fair and public hearing. Reinstating the appeal ensures the Appellants are not locked out from pursuing their case on technical grounds.

12. In view of the foregoing, I am satisfied that the Appellants have demonstrated sufficient cause to warrant reinstatement of the appeal. Accordingly, I make the following orders:

- i. The order made on 19th November 2024 closing the appeal file is hereby set aside
- ii. The appeal is reinstated and shall proceed to hearing
- iii. The notice of motion dated 22nd September 2024 be served for hearing on 30th April 2025
- iv. Costs of this application shall be in the cause.

DELIVERED AT NAIROBI THIS 08TH DAY OF APRIL 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances



Court Assistant - Ubah

For Appellants - N/A for Ngugi Kamau Advocates

For Respondent - N/A for Bwo'Oigara, Getange & Co. Advocates

