



Gatika v Njeri (Civil Appeal E343 of 2023) [2025] KEHC 11435 (KLR) (16 June 2025) (Ruling)

Neutral citation: [2025] KEHC 11435 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E343 OF 2023
DO CHEPKWONY, J
JUNE 16, 2025**

BETWEEN

GEORGE KIROBI GATIKA APPELLANT

AND

WILSON KIIRU NJERI RESPONDENT

(Being an appeal arising from the Judgement delivered at the Chief Magistrate's Court in Limuru by Honourable P. M. Mugure, Principal Magistrate on 19th April, 2023 in Civil Suit No.271 OF 2018)

RULING

1. This matter was instituted vide a Notice of Motion application dated 24th August, 2022, whereby the court granted orders for the Applicant/Appellant to lodge an appeal out of time and stay of execution of the Judgment and decree issued by Hon. P. M. Mugure on 19th April, 2023 alongside directions for the Respondents to be served with the application and orders of the court.
2. The parties were to attend court for mention on 2nd November, 2023 to take directions in the matter but this did not happen until 8th April when the court issued a Notice upon the parties to show cause why the appeal should not be dismissed for want of prosecution.
3. On 17th October, 2024, M/S Cherono, the Appellant's counsel informed the court that she had just taken over the matter from the previous Counsel, Mr Kariuki and sought time to be conversant with the Appeal and file a response to the Notice to Show Cause. The Respondent's Counsel opposed this on the basis that the Appellant has been changing Counsel severally yet the Appeal was filed in August, 2023 and he (counsel for the Respondent) is the only one who attends court. However, the court granted both Counsel leave to file responses to the said Notice but as at the time of writing this Ruling, the Appellant's counsel had not filed their response. The Respondent filed submissions dated 6th December, 2024.



4. According to the Respondent, the appeal was filed on 24th August, 2023 and for more than 12 months neither the Appellant nor his advocate took any steps in the appeal as they did not attend the various court sessions which shows that they do not have any interest in the appeal. He holds that the Appeal is therefore ripe for dismissal under Order 17 Rule 2 of the *Civil Procedure Rules*.
5. The Respondent also contends that despite being granted a chance to file a response to the Notice to show cause, the Appellant has again failed to do so. He further states that since the application seeking leave to lodge an appeal out of time was never allowed or considered by the court, the Memorandum of Appeal is therefore not properly before court. He argues that even though the court was to grant the said leave, the grounds raised in the Memorandum of Appeal do not show that the appeal has high chance of success.
6. The Respondent goes on to argue that the appeal is a delay tactic given that the road traffic accident that is subject of the impugned Judgment occurred on 11th September, 2017 and the Judgment delivered on 19th April, 2013, thus he deserves to enjoy the fruits of his Judgment. The Respondent holds that the Appellant delayed the trial of the matter through unnecessary adjournments, failure to attend court, filing numerous applications and filing the present appeal, all meant to frustrate the Respondent. He has therefore urged the court to consider the interest of justice and dismiss the appeal.
7. Upon reading through the record and more particularly, the Respondent's submissions, the court notes that after filing the application dated 24th October, 2023, the Appellant has not taken any further step towards prosecuting the appeal. It also noted that the Respondent opposed the said application through a Replying Affidavit of Wilson Kiiru Njeri sworn on 22nd September, 2023 and the parties were to attend court for mention and take directions upon confirming compliance of the directions and order issued on 15th September, 2025. It is worth noting that although neither party nor their respective advocates were not in attendance before court on 2nd November, 2023, to confirm their compliance of the said directions and or orders, it was confirmed that the Respondent had complied by filing his response, the Applicant/Applicant had not complied with the order requiring him to deposit half the decretal sum in court as a condition for leave to file his appeal out of time.
8. Therefore, as it stands, the court finds that this appeal filed herein was improperly/irregularly opened. On noting that the Applicant had not taken any step in having his application prosecuted, the court issued a Notice to Show Cause why the appeal should not be dismissed, the counsel for the parties attended court and were granted leave to file a response to the Notice but again the Appellant and or counsel did not comply.
9. Clearly, from the conduct of the Applicant herein, he is no longer interested in prosecuting the application. For this reason, this Court finds it necessary to unclog the court system of backlog and proceeds to dismiss the appeal for want of prosecution with costs to the Respondent.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 16TH DAY OF JUNE 2025.

D. O. CHEPKWONY

JUDGE

