



**Fidelity Shield Insurance Comapny Limited v Architects & another (Civil Appeal E502 of 2024) [2025] KEHC 9989 (KLR) (Civ) (11 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9989 (KLR)

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

**CIVIL**

**CIVIL APPEAL E502 OF 2024**

**AC MRIMA, J**

**JULY 11, 2025**

**BETWEEN**

**FIDELITY SHIELD INSURANCE COMAPNY LIMITED ..... APPLICANT**

**AND**

**AXIS ARCHITECTS ..... 1<sup>ST</sup> RESPONDENT**

**VICTOR KIPKEMOI KOECH ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Through an application by way of Notice of Motion dated 28<sup>th</sup> February 2025, the Applicant sought the following orders: -
  1. This Honourable Court be pleased to set aside the proceedings of 15<sup>th</sup> October 2024 and to issue an order reinstating the instant appeal.
  2. .... Spent
  3. This Honourable Court be pleased to issue orders as it may deem appropriate in the interest justice to the Appellant.
2. The application was supported by the grounds on the face of it and the Affidavit sworn on 28<sup>th</sup> February 2025. The appeal stood dismissed for failure by the Applicant to file a Record of Appeal within the given timelines. The Applicant averred that the failure was occasioned by the delay by the trial Court to provide the necessary documents crucial in preparing the record. It further averred that in a bid to mitigate the delay, it resorted to and filed an incomplete Record of Appeal as it awaited the rest of the documents from the Court. In urging this Court to reinstate the appeal, it averred that the circumstances leading to their failure to comply was beyond its control and it should be granted an opportunity to prosecute the appeal.



3. The application was strenuously opposed by the Respondents, hence this ruling. The 1<sup>st</sup> Respondent filed a Replying Affidavit sworn on 21<sup>st</sup> March 2025. It averred that the Applicant was not keen on prosecuting the appeal as it failed to set it down for hearing since it filed the Memorandum of Appeal in 2024. It further averred that the Applicant is using the instant application as a delaying tactic to frustrate the 1<sup>st</sup> Respondent from enjoying the fruits of the judgment. Additionally, it contended that no sufficient grounds were given to warrant the reinstatement and as such, the application ought to be dismissed with costs.
4. The 2<sup>nd</sup> Respondent on the other hand filed a Grounds of Opposition dated 20<sup>th</sup> March, 2025. He posited that the Applicant had not met the threshold for reinstatement of the appeal as it failed to provide sufficient reasons why it was unable to prosecute the appeal for approximately one year despite being given an opportunity to do so. Additionally, he posited that the Applicant's non-compliance with the orders of this Court had occasioned waste of judicial time and as such, the application should be dismissed with costs.
5. Pursuant to the directions of this Court, the application was disposed of by way of written submissions. The Applicant's submissions were dated 24<sup>th</sup> March 2025 and those by the 1<sup>st</sup> Respondent were dated 17<sup>th</sup> April 2025 while the 2<sup>nd</sup> Respondent's submissions were dated 14<sup>th</sup> April 2025.
6. The Court has carefully perused and considered the application, the responses, the submissions and the decisions referred to by the parties. It is now for this Court to ascertain whether the application is merited.
7. Article 159[2][b] of the Constitution and Sections 1A and 1B of the *Civil Procedure Act* call for expeditious and fair determination of disputes. To this end, and relevant to the instant case, a Court seized of an appeal may, depending on the peculiar instances of a case, dismiss an appeal at any time if the circumstances call for such an order. In the instant case, the appeal was dismissed for want of prosecution as a result of the Applicant's failure to file the Record of Appeal timeously.
8. This Court has had the liberty to peruse the record and noted that the Memorandum of Appeal was filed on 16<sup>th</sup> April, 2024 and the appeal was subsequently admitted for hearing on 30<sup>th</sup> May, 2024. When the matter came up on 15<sup>th</sup> October 2024, the Applicant explained to the Court that it had difficulties obtaining typed proceedings from the trial Court upon which the Court granted the Applicant an additional 30 days' to file the Record of Appeal failure to which the appeal would stand dismissed. From the record, and due to non-compliance on the part of the Applicant, the appeal subsequently stood dismissed on 31<sup>st</sup> December 2024. The instant application was filed on 28<sup>th</sup> February 2025 to reinstate the appeal.
9. Reinstatement of a suit dismissed for want of prosecution is a discretionary remedy that the Court must exercise judiciously. This is of course taking cognizance of the unique circumstances of the case. Article 50[1] of the *Constitution* guarantees every party the right to a fair trial. Giving an opportunity to a party to present its case is at the heart of the constitutional imperative of fair trial. The Applicant did not delay in bringing the instant application. Additionally, it deposited the entire decretal sum subject of the appeal as security in this Court and also filed an incomplete Record of Appeal. I have no doubt in my mind that there was apparent effort on the part of the Applicant to have the appeal heard and determined on merit and expeditiously so. For this reason, it is in the interest of substantive justice that the Applicant be allowed to prosecute the appeal. However, in order to strike a balance between the rights of the parties, it will be paramount to have the hearing and determination of the appeal expedited.



10. Having said as much, the upshot is that the application is merited and is allowed in the following final terms: -

- (a) The appeal be and is hereby reinstated and the dismissal order made on 15<sup>th</sup> October 2024 is hereby set-aside and quashed accordingly.
- (b) To expedite the hearing of the Appeal, the Hon. Deputy Registrar shall avail the trial Court file being Nairobi [Milimani] Small Claims Court Civil Case No. E5453 of 2023.
- (c) Mention on a date to issue for further directions on the hearing of the appeal.
- (d) Costs of the application shall be in the appeal.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 11<sup>TH</sup> DAY OF JULY, 2025.**

**A.C. MRIMA**

**JUDGE**

Ruling virtually delivered in the presence of:

Ms Ndirangu, Learned Counsel for 1<sup>st</sup> Respondent

Amina/Abdirazak – Court Assistants.

