



Njoroge (Suing as the Legal Representative and Administrator of the Estate of Joseph Natil Lodeket Ekale) v Cartland (Civil Appeal 71 of 2019) [2025] KEHC 11261 (KLR) (16 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11261 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL APPEAL 71 OF 2019
GL NZIOKA, J
JULY 16, 2025**

BETWEEN

MARY NYAMBURA NJOROGE (SUING AS THE LEGAL REPRESENTATIVE AND ADMINISTRATOR OF THE ESTATE OF JOSEPH NATIL LODEKET EKALE) APPLICANT

AND

ROBERT JOHN CARTLAND RESPONDENT

RULING

1. By an amended notice of motion application dated 31st July 2023, brought under the provisions of section(s) 13(7) and 19 of the *Environment and Land Court Act* (Cap 12A) Laws of Kenya and section(s) 1A, 1B 3 and 3A of the *Civil Procedure Act* (Cap 21) Laws of Kenya and Order 42 Rule 21 and Order 51 of the Civil Procedure Rules 2010 the applicant is seeking for the following orders: -
 - a. Spent
 - b. That instant appeal being Naivasha High Court Civil Appeal No. 71 of 2019, Mary Nyambura Njoroge (Legal Representative and Administratrix of the Estate of Joseph Natil Lodeketen Ekale –vs- Robert John Cartland be re-opened for hearing and consideration of the instant application for re-instatement of the same.
 - c. That the ex parte orders given on 9th March 2023 Naivasha High Court Civil Appeal No 71 of 2019 Mary Nyambura Njoroge (Legal Representative and Administratrix of the estate of Joseph Natil Lodeketen Ekale –vs- Robert John Cartland which orders dismissed the said appeal for want of prosecution and any consequential orders thereof be reviewed and be set aside.



- d. That the Honourable court be pleased to order that the Naivasha High Court Civil Appeal No. 71 of 2019 Mary Nyambura Njoroge (Legal Representative and Administratrix of the Estate of Joseph Natil Lodeketen Ekale –vs- Robert John Cartland be reinstated for hearing and determination on merit.
 - e. There be no orders as to costs
2. The application is based on the grounds thereto and the affidavit of the applicant of the even date.
 3. The applicant avers in a nutshell that, when the appeal was dismissed on 9th March 2023, for want of prosecution, her lawyers were not aware of that date. That the respondent’s counsel used a wrong email address to notify her lawyers of the hearing of the matter on the said date. Consequently, she was condemned unheard.
 4. That, the failure to attend court was not deliberate and that an advocate’s mistake should not be visited upon the litigant.
 5. The applicant has annexed to the affidavit in support of the application a copy of an affidavit of service filed by the respondent indicating the applicant’s counsels email address is Kuttokairaadvocate@gmail.co.ke which is not the correct email address.
 6. That, the respondent were served with the record of appeal vide applicant’s counsels correct email address which is Kuttokairaadvocates@gmail.com, a copy of which has been annexed to the support affidavit.
 7. However, the application was opposed vide a replying affidavit dated 21st November 2024, sworn by C. K Kiplangat an Advocate representing the respondent. He avers that, the appellant has not been diligent in prosecuting the appeal herein and that, it was dismissed for non-compliance with the court order requiring the applicant to file submissions issued on 26th November 2021 and restated on 2nd November 2022. That the court and respondent kept issuing the appellant with mention notices but the appellant did not attend court.
 8. That, the appellant’s insurer has settled the judgment in full, hence intentional delay of the matter. The respondent produced copies of various emails and mention notices, affidavits, and a cheque issued by the insurer in satisfaction of the decree and argued that litigation has to come to an end.
 9. The application was disposed of vide filing of submission. By submission dated 2nd October 2023, the applicant reiterated that, the date the matter was dismissed she was not aware of it being heard in court. That, by 22nd September 2024, the appeal had not been admitted to hearing and when the appeal was admitted the applicant was not aware of the same. The appellant relied on the case of; Nganga Njoroge –vs Jane Watiri (2008) eKLR HC Civil Appeal No. 54 of 2002, where the appeal was reinstated despite a delay of two (2) to three (3) years.
 10. However, the respondent in submission dated 21st November 2024, argued that, the appellant took too long before lodging the application for reinstatement of the appeal, and that, there is no plausible evidence to explain non-attendance or non-compliance with court orders. The respondent relied on the case of; Habo Agencies Limited –vs- Wilfred Odhiambo Musingo 2020 eKLR where the court held that, its discretion cannot be exercised on capricious or whimsical reasons and where the applicant is indolent and plainly deleterious.
 11. At the conclusion of the arguments by the parties, the application is considered in the light of the materials before it, in particular, the record of the court.



12. Pursuant thereto, it is evident that, the appeal has been pending since 2021, and more so when it was admitted on 12th November 2021. Prior to that date, the appellant's counsel appeared before the court for directions on 6th July, 22nd September and 24th November 2021, when directions were given on filing of submissions. The matter was stood over to 5th April 2022. And then remained dormant up to 2nd November 2022.
13. On 1st December 2022, the appellant's counsel indicated that they were yet to file submissions as ordered on 24th November 2021. Notably the twenty-one (21) days given to the appellant had long expired. The appellant was given an opportunity to comply with those orders and matter stood over to 7th February 2023. That mention date was given in the presence of the appellant's counsel.
14. However, on that date, the appellant's counsel was not in court. The question is; why was the appellant not in court despite having full knowledge of the mention date? No reason has been advanced.
15. Be that as it may, the matter was stood over to 9th March 2023. Notably even then the appellant had not filed any submission despite the extended period to do so. This is a fact the appellant is not addressing even as she seeks for re-opening the matter. On 9th March 2023, upon the court being informed that the appellant was aware of the mention on that date, dismissed the appeal.
16. However, as already stated herein the appellant argues that, she was not notified of attendance on 9th March 2023. From the court record, the respondent stated that, they served the appellant and told the court they had filed a return of service. I note that an affidavit of service dated 7th February 2023, sworn by Ancent Ndambuki Mutuku indicates at paragraph 3, that a mention notice was emailed to appellant's counsel vide email kuttokairaadvocates.co.ke but the appellant's counsel states, that, the said email address is wrong. I note that, indeed the previous correspondence to the appellant's advocate were emailed to kuttokairaadvocates@gmail.com.
17. Consequently, the mail sent to the wrong email address cannot have reached the appellant. To that extent she deserves the benefit of doubt. Further, she was thus not indeed accorded an opportunity before the appeal was dismissed and, on that ground, it will be in the interest of justice to reinstate the appeal.
18. However, it is not in vain, when the respondent submits that, the appellant has been negligent in prosecuting the appeal. The record indicates that the appellant's last appearance in court was 7th February 2023, before she re-surfaced with an application dated 20th June 2023. So where was the appellant all along?
19. It suffices to note that the appellant's conduct in the prosecuting the appeal herein is least impressive. The matter has been pending since 2019 over five (5) years. The appellant must compensate the respondent for prolonged litigation herein.
20. Pursuant to the aforesaid I reinstate the appeal on the following conditions:
 - a. The appellant will pay the respondent thrown away costs of Kshs 20,000 on or before 31st July 2025.
 - b. The appellant to file submissions within seven (7) days of the date of this order.
 - c. The respondent to file submissions within seven (7) days after service.
21. The matter to revert on chambers on or before 30th July 2025. Failure to comply with the afore condition, the order reinstating the appeal to stand vacated on the 31st day of July 2025.



22. It is so ordered.

DATED, DELIVERED AND SIGNED THIS 16TH DAY OF JULY 2025

GRACE L. NZIOKA

JUDGE

In the presence of:

Mr. Nabasenge for the Applicant

Mr. Kiplangat for the Respondent

Ms Hannah- Court assistant

