



REPUBLIC OF KENYA



**KENYA LAW**  
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**Odhoch v Odera (Family Appeal E019 of 2022)  
[2025] KEHC 10066 (KLR) (Family) (11 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10066 (KLR)

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

**FAMILY**

**FAMILY APPEAL E019 OF 2022**

**H NAMISI, J**

**JULY 11, 2025**

**BETWEEN**

**DENNIS OBONDO ODHOCH ..... APPELLANT**

**AND**

**EMMY AUMA ODERA ..... RESPONDENT**

**RULING**

1. Before the Court is Notice of Motion dated 25 April 2025 seeking the following orders:
  - i. Spent
  - ii. This Honourable Court be pleased to reinstate hereof the Appeal herein for hearing and determination;
  - iii. This Honourable Court be pleased to issue directions on the hearing and disposal of the Appeal, including the citing timelines for filing of written submissions;
  - iv. Costs of and incidental to this Application be provided for.
2. The Application, which is brought under sections 1A, 1B and 3A of the *Civil Procedure Act*, Order 12 Rule 6 and Order 17 Rule 2(6) of the *Civil Procedure Rules*, is made following dismissal of the appeal for want of prosecution made on 26 March 2025. The Application is premised on the grounds on the face of the Application and supported by the Affidavit of Christine Mumbi Kiume, Advocate.
3. Counsel for the Appellant/Applicant avers that the Applicant was previously represented by the Njeri Njoroge & Company Advocates, with whom they had a falling out. The firm of MOB Law has now been engaged to pursue this matter to its logical conclusion. The Applicant contends that failure to prosecute the appeal was inadvertent, beyond his control at the time and was not inordinate, thus



excusable. The Applicant avers that his action in engaging new counsel, perusing the file and obtaining the Record of Appeal is an indication of his readiness to conclude the matter.

4. The Application is opposed. The Respondent filed Grounds of Opposition as follows:
  - i. That Order 12 Rule 6 upon which the said application is founded relates to reinstatement of dismissed suits and not appeals;
  - ii. That this Application is, therefore, anchored on irrelevant legal foundation;
  - iii. That this Appeal was dismissed pursuant to Order 42 Riles 35 and not Order 12, which relates to dismissal of suits;
  - iv. That there is no provision under Order 42 of the *Civil Procedure Rules* or any other law for the reinstatement of appeal dismissed for want of prosecution;
  - v. That in any case, this matter was set down for mentions on numerous occasions but the Appellant took no serious steps to prosecute the same;
  - vi. That the appeal belongs to the Appellant and not the advocate on record. It behoved the appellant to make follow ups to ensure that his appeal is prosecuted promptly.
  - vii. That the allegations that the Advocates formerly on record failed to prosecute the appeal is, therefore, in bad taste and only meant to shift blame from a party who fails to prosecute his case to his Advocates upon changing advocates;
  - viii. That this Application is, therefore, filed in blatant abuse of the process of the Honourable Court.
5. I will briefly discuss the history of this matter. The Record of Appeal was filed on 16 November 2022.
6. When the matter first came before this Court on 10 July 2024, counsel for the Appellant informed the Court that she was not in a position to proceed due to bereavement. Counsel confirmed that the Record of Appeal had been filed and undertook to serve the same on the Respondent. The Court directed that the appeal be canvassed by way of written submissions, giving each party 30 days to file.
7. The matter was then mentioned before the Deputy Registrar on 17 September 2024 and 25 November 2024. Each time, parties were absent. On 12 February 2025, Counsel for the Respondent appeared before the Deputy Registrar and informed the Court that the Record of Appeal was yet to be served. The matter was set down for mention on 26 March 2025 before this Court. On the said day, only Counsel for the Respondent was present. I note that the Applicant has not presented any reasons, sufficient or otherwise, for the non-attendance of Counsel or the Applicant himself. The only reason so far is that he had a falling out with his previous counsel.
8. Needless to say, it has been 3 years since this appeal was lodged. The Appellant has taken no steps whatsoever to have the same heard and determined. Even the simplest of actions such as service of the Record of Appeal, which was filed in November 2022, has not been done. The Appellant/Applicant has not offered any cogent explanation for the delay in prosecuting his appeal.
9. Order 42 Rule 35(2) of the *Civil Procedure Rules* provides that if within a year after service of the Memorandum of Appeal the appeal shall not have been set down for hearing, the Registrar shall on notice to the parties list the appeal before a Judge in chambers for dismissal. Pursuant thereto, on 12 February 2025, the Deputy Registrar listed this matter before this Court for dismissal. The Appellant did not attend on 26 March 2025 when the appeal was subsequently dismissed.



10. In the case of *Richard Nchapi Leiyagu v IEBC & 2 others*, the Court held as follows:

“The right to a hearing has always been a well protected right in our Constitution and is also the cornerstone of the rule of law. This is why even if the courts have inherent jurisdiction to dismiss suits, this should be done in circumstances that protect the integrity of the court process from abuse that would amount to injustice and at the end of the day there should be proportionality.”

11. Litigation must come to an end. The Respondent cannot live with a sword hanging over her, like a proverbial guillotine, waiting for the same to fall whenever the Appellant will be ready to prosecute his appeal. Since the Appellant has obviously been slumbering, then it is only fitting that he continues to do so.

12. The Application is, therefore, unmeritorious and the same is dismissed with costs to the Respondent.

**DATED AND DELIVERED AT NAIROBI THIS 11 DAY OF JULY 2025**

**HELENE R. NAMISI**

**JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

Appellant/Applicant: Ms. Mumbi Kiume h/b Brian Onyango

Respondent: N/A

Court Assistant: Libertine Achieng

