



Real People Kenya Limited v Kirongothi & 4 others; Daystar Auctioneers (Interested Party) (Civil Appeal E818 of 2021) [2025] KEHC 9938 (KLR) (Civ) (10 July 2025) (Ruling)

Neutral citation: [2025] KEHC 9938 (KLR)

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

CIVIL

CIVIL APPEAL E818 OF 2021

JN MULWA, J

JULY 10, 2025

BETWEEN

REAL PEOPLE KENYA LIMITED APPELLANT

AND

GRACE NYAKONYU KIRONGOTHI 1ST RESPONDENT

JANE WANGARI KINUTHIA 2ND RESPONDENT

REUBEN GICHURU GITONGA 3RD RESPONDENT

ESTHER WANJIRU 4TH RESPONDENT

STANLEY MWANIKI MTAI 5TH RESPONDENT

AND

DAYSTAR AUCTIONEERS INTERESTED PARTY

RULING

1. Before Court is the Notice of Motion dated 18th October, 2024 brought by the Appellant under Article 159(2) (d), Order 42 Rule 6 (1) and (2), Order 51 Rule 1 of the Civil Procedure Rules 2010, Section 1A, 1B and 3A OF the [Civil Procedure Act](#), Cap 21 and all other enabling provisions of the law.
2. The Application seeks the following orders:
 1. Spent.
 2. Spent.
 3. Spent.



4. That the Honorable Court be pleased to set aside the Ex Parte Decree made on 19th September 2024 finding that the Appeal herein stands dismissed.
 5. That pursuant to prayer 4 above, the Appeal herein be reinstated for hearing.
 6. That this Honorable Court be pleased to enlarge time provided in the ruling delivered on 18th April, 2024 for the prosecution of the Appeal.
 7. That costs of this Application be costs in cause.
3. By the Supporting Affidavit sworn by Mr. Simo Owawa the Legal officer of the Applicant on 18th October, 2024, the history of the matter leading to the appeal's dismissal, and the court ruling dated 18th April 2024 setting aside the dismissal order and reinstating it for hearing upon conditions that it was to be fully prosecuted within 90 days of the ruling.
 4. The Applicant posits that it complied with the court ruling by filing the Record of Appeal and submissions and is pending substantive directions from the court on judgment date.
 5. The Applicant further states that by the Exparte proceedings on 19th September 2024, the Appeal was dismissed, after which the Respondent in execution proceedings proclaimed the Appellants property that necessitated filing of the instant application seeking stay orders of execution pending hearing of the application.
 6. In opposition to the application, the 1st Respondent filed a replying affidavit. The 2nd – 5th Respondent did not file their responses to the application. The parties also filed submissions to buttress their rival depositions.

Applicant's Written Submissions .

7. The Applicant submitted one issue;

Whether the Honourable Court should set aside the orders dismissing the appeal and reinstate the appeal for hearing?
8. The Applicant argued that in compliance with court ruling dated 18th April, 2024 as a show of commitment to prosecuting its appeal, it filed a Record of Appeal within 7 days of the ruling;

That in the month of May 2024, it's advocates while in the process of applying for a mention date for directions on hearing of the appeal, he encountered a notice by the Honourable Deputy Registrar Civil Division on the Kenya Law Reports indicating that the Division intended to hold a Rapid Response Initiate (RRI) in the month of May and June, 2024 and directing parties with pending appeals to proceed to file records of appeal and submissions.
9. That on the strength of the said notice, which has been annexed in the Supporting Affidavit as Annexure SO-6, the Appellant filed its written submissions in support of the appeal and that the Appellant had complied fully in terms of filing of documents and what remained was listing the matter for directions before the Deputy Registrar of the High Court Civil Appeals registry that appeared to have been planning to handle such appeals through RRI.

Respondent's submissions .

10. In their submissions dated 2nd April, 2025, the Respondents submitted that prayer 4 of the motion is misconceived and that the order that the appeal will stand dismissed if not prosecuted in 90 days was made after inter partes hearing of an application dated 27/6/2023 which sought similar orders as are



sought herein and which was the subject of a detailed ruling by Lady Justice Meoli dated 18/4/2024 whereby she "most reluctantly" exercised discretion and set aside default dismissal order and reinstated the Appeal subject to it being prosecuted in 90 days.

11. They further argued that, the issues raised and the orders sought are res judicata and that this Court cannot be moved to consider matters considered in a previous application where conditional orders were made after exercise of the very discretion sought to be exercised herein. They however conceded that a Court has discretion to extend time but upon candid, cogent and persuasive reasons and argued further that in this case where time had been extended and limited, no room was left for further extensions.

Analysis and determination

12. The Court has carefully considered the motion, replying affidavit, submissions and authorities.

Issues for determination.

Whether or not this court should set aside the finding that this Appeal stands dismissed.

13. Article 159(2)(d) of *the Constitution* of Kenya provides that:-

“justice shall be administered without undue regard to procedural technicalities.”

14. Order 51 rule 6 of the Civil Procedure Rules (CPR) states;

“Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed: Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise.” (emphasis added)

15. Vide ruling of this court delivered on 18th April 2024 the court reinstated the appeal with a condition that the same be fully prosecuted within 90 days thereof. The Appellant/Applicant filed its Record of Appeal within 7 days of the ruling, and also written submissions.
16. I have perused the record and as a Judge in the Civil Division, I am aware of the Honorable Deputy Registrar’s, (DR) notice which was published on the Kenya Law Reports for attention of all Advocates and Litigants indicated that the Division intended to hold a Rapid Response Initiate (RRI) in the month of May and June, 2024 and as such parties with pending appeals should proceed to file records of appeal and submissions.
17. There is evidence that the Appellant filed its written submissions in support of the appeal and that the Appellant had complied fully with terms of filing of the Record of Appeal as well as submissions in compliance with the notice.
18. It was the DR and the court registry, who ought to have flagged the Appeal for RRI, for taking further directions and judgment before any of the RRI Judges. On the part of the Appellant by its Advocates, they ought to have followed up with the DR to confirm that its appeal was among the many that had been assigned for RRI, though in my view this was secondary to the DR’s duty. Consequently, I find no fault with the Appellant in compliance with the court orders issued on 18th April 2024.



19. In conclusion, pursuant to provisions of Order 51 rule 6 CPR, and sections 1A, 1B and 3A of the *Civil Procedure Act*, I am persuaded to exercise my discretion and allow the Appellant's application dated October 18, 2024 in terms of prayer numbers 3, 4, and 5 thereof.
20. Costs of the application shall abide by the outcome of the appeal.
21. The appeal shall be listed for further directions before the Deputy Registrar of the High Court Civil Appellate Division on August 12, 2025.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 10TH DAY OF JULY, 2025

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JANET MULWA.

JUDGE

