



REPUBLIC OF KENYA



**KENYA LAW**  
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**Maaru v John (Civil Appeal 24 of 2021)  
[2024] KEHC 10998 (KLR) (12 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 10998 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CIVIL APPEAL 24 OF 2021  
JM OMIDO, J  
SEPTEMBER 12, 2024**

**BETWEEN**

**REEMY MAARU ..... APPELLANT**

**AND**

**SIMON MUTUMA JOHN ..... RESPONDENT**

*(Being an Appeal from the Ruling and Order of Hon. M.N Gicheru, Chief Magistrate delivered on 18th January, 2021 in Embu Business Premises Rent Tribunal Case No. 54 of 2020)*

**JUDGMENT**

1. This appeal emanates from the ruling and order of Hon. M.N Gicheru, Chief Magistrate delivered on 18<sup>th</sup> January, 2021 in Embu Business Premises Rent Tribunal Case No. 54 of 2020.
2. The grounds of appeal presented by the Appellant vide the Memorandum of Appeal dated 12<sup>th</sup> February, 2021, upon which he seeks to upset the ruling and order of the lower court are as follows:
  - i. The learned trial Magistrate erred in law and facts in determining that there was a tenancy relationship between the Appellant and the Respondent over the Appellant's Plot No. 91(b) (1) Nkubu Municipality.
  - ii. The learned trial Magistrate erred in law and facts by granting the orders sought by the Respondent which was against the weight of the evidence adduced.
  - iii. The learned trial Magistrate erred in law and facts by awarding compensation which was never sought for by the Respondent or proved in law.
  - iv. The learned trial Magistrate erred in law by ordering for the reopening of the premises on Plot No. 91(b)1 Nkubu Municipality which was against the evidence adduced.
  - v. The learned Magistrate erred in law by relying on speculations and conjectures in his findings.



- vi. The learned trial Magistrate’s findings were against the weight of the evidence adduced and the law.
3. On 24<sup>th</sup> October, 2023, the court (Wamae, J.) directed that the appeal proceeds by way of written submissions and gave the parties herein timelines, with a deadline of 30<sup>th</sup> November, 2023, for filing their respective submissions. Whereas the Respondent complied with the order and filed his submissions, the Appellant did not comply.
4. It is instructive from the record that the matter has thereafter been mentioned on at least eight occasions spanning over a period just shy of one year with notices to the Appellant through his Advocates, who, despite all the nudges, has for unexplained reasons failed to file submissions.
5. What then is the fate of this appeal? I will borrow from case law where the court (Mwangi Njoroge, J.) in the case of *Stephen Muthamia Marete & 2 others v Mary Naitore Kinyua (enjoined as the legal representative of the Estate of Patrick Kinyua Iringo)* [2018] eKLR, faced with a similar situation where an Appellant failed to file submissions in support of an appeal, observed and held as follows:
- “In my view, when an Appellant has been ordered to file written submissions and he fails to do so as the Appellants have done in this case, the court should find, as it does in this case, that the appellant has failed to prosecute his appeal, or is no longer interested in pursuing it.”
6. The court concluded as follows:
- “I find that the Appellants have failed to prosecute their appeal. I hereby dismiss the appeal with costs for want of prosecution.”
7. In the obtaining situation, I have no doubt that the Appellants has to date failed to prosecute his appeal and the only available avenue, in the circumstances, is to dismiss the same for want of prosecution, which I hereby do, with costs to the Respondent.

**DELIVERED (VIRTUALLY), DATED & SIGNED THIS 12<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

**JOE M. OMIDO**

**JUDGE**

For Appellant: No appearance.

For Respondent: Present in person.

Court Assistant: Mr. Kinoti.

