



**Wanderi v Rono & 2 others; Ngunia & 2 others (Interested Parties) (Civil Appeal 158 of 2018) [2023] KEHC 18856 (KLR) (15 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18856 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL APPEAL 158 OF 2018  
HK CHEMITEI, J  
JUNE 15, 2023**

**BETWEEN**

**SALOME WANGARI WANDERI ..... APPLICANT**

**AND**

**DIXON KIPNGETICH RONO & 2 OTHERS ..... RESPONDENT**

**AND**

**JANE WAIRIMU NGUNIA & 2 OTHERS ..... INTERESTED PARTY**

**RULING**

1. On June 4, 2021 this court suo moto dismissed the suit herein for want of prosecution. The applicants have filed the application herein dated October 4, 2021 seeking that this appeal be reinstated. The application is supported by the sworn affidavit of Waiganjo Mwangi advocate and the grounds on the face of it.
2. The applicants contend that the court dismissed the appeal without any notice despite them writing numerous correspondences to the court seeking the typing of proceedings. The said affidavit in support has attached several letters addressed to the court in attempt to follow up the same.
3. Consequently, the applicants are asking this court to review the dismissal as it was not of their making. At any rate they have already filed a record of appeal.
4. One Wincate Macharia on behalf of the insurance company has objected to the said application vide the replying affidavit sworn on April 7, 2022 in which he accused the applicants of indolence and not taking the appeal seriously. He deponed that the insurance company has since moved on and by opening the appeal again it stands to suffer prejudice.
5. He accused the applicants of not being serious and following the matter only after the prompting by the dismissal. He supported the dismissal of the matter.



6. The court directed the parties to file written submissions which they have complied and the court does not see the need to reproduce them.
7. The court finds merit however in the applications for two reasons. First of all, although the court rightfully dismissed the matter, there was no evidence of service upon the parties. The practice even under order 35(2) of the *civil procedure rules* is to ensure that the parties are notified of any step taken by the court or for that matter the parties.
8. In this case, the court rightfully dismissed the appeal for want of prosecution but it ought to have notified the parties and more so the appellants.
9. The court secondly takes note of the correspondences by the advocate for the appellants addressed to the court seeking the typed proceedings.
10. The respondents cannot cry wolf since they did not seek to dismiss the matter for want of prosecution as they are entitled as well. As it were they are riding on the bungled courts process. They shall not benefit.
11. Be it as it may, now that the record of appeal has been filed, the only way to hasten the process is to allow the appellant process the appeal expeditiously and without much delay.
12. In the premises, the application is allowed, the orders dismissing the appeal are hereby set aside with no orders as to costs.
13. The appellant is hereby granted 30 days from the date herein to fix the appeal for hearing and in default the same to stand dismissed automatically.

**Dated signed and delivered via video link at Nakuru this 15<sup>th</sup> day of June 2023.**

**H. K. CHEMITEI.**

**JUDGE**

