



**Chege v Muthamia (Environment and Land Appeal
E036 of 2022) [2025] KEELC 3681 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3681 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E036 OF 2022**

BM EBOSO, J

MAY 8, 2025

BETWEEN

JOSEPH WAMBUGU CHEGE APPELLANT

AND

JOSEPH KIRIMI MUTHAMIA RESPONDENT

RULING

1. Falling for determination in this ruling is the notice of motion dated 13/2/2025 brought by Joseph Wambugu Chege [referred to in this ruling as “the applicant”]. Through it, the applicant seeks the following verbatim orders:
 1. That this Honourable Court be pleased to reinstate the appeal that was dismissed for want of prosecution on 16th July, 2024
 2. That this Honourable Court be pleased to issue a temporary injunction restraining the respondent, their agents, servants, or in anyone acting on their behalf from entering, damaging, cutting or in any way interfering with the suit property pending the hearing and determination of this appeal and the reinstated appeal.
 3. That this Honourable court be pleased to issue an order allowing the appellant/applicant, his agents, his servants or anyone acting on his behest to enter the suit property, harvest crops and collet wood on the suit property pending the hearing and determination of this application and the reinstated appeal.
 4. That this Honourable court be pleased to grant temporary injunction restraining the respondent from applying for the Decree pending the hearing and determination of this application



5. That this Honourable Court be pleased to issue stay of proceeding in this matter and for avoidance of doubt the assessment of costs of the bill of costs dated 27th November, 2024.
 6. That this Honourable Court be pleased to issue stay of execution of the decree in Meru MCELC No. 58 of 2019 for preservation of the suit property pending the hearing and determination of this application and the reinstated appeal.
 7. That this court be pleased to set aside the order issued on 16th July, 2021 dismissing the appellant's/applicant's appeal hereof and reinstate the same for hearing.
 8. That upon grant of prayer 1 to 7 the applicant/appellant be granted leave to file his submissions on the reinstated appeal.
 9. That costs of the application be in the cause.
2. The application was premised on the grounds set out on the face of the motion and in the applicant's supporting affidavit dated 12/2/2025 and the supplementary affidavit dated 27/2/2025. The application was canvassed through written submissions dated 27/2/2025 in which the applicant identified and submitted on only the following three issues: (i) Whether this court should grant an order reinstating this appeal; (ii) Whether this court should grant an order staying execution of the decree in Meru MC ELC No. 58 of 2019; and (iii) the question of costs of the application.
 3. On reinstatement of the appeal, the applicant's case is that he instructed a Nanyuki based advocate to file and prosecute his appeal. Unknown to him, the advocate abruptly closed her office and relocated to another town without notifying him. He learnt about dismissal of the appeal when the respondent forcibly entered the suit property on 12/10/2024, cut down trees and caused significant damage to the suit property. The applicant adds that he was not informed of any steps required to prosecute the appeal, contending that failure to prosecute the appeal was occasioned by the abrupt closure of office by his advocate, which left him without representation or knowledge of the court processes. He adds that he has since then sought alternative legal advice and he is now prepared to prosecute the appeal expeditiously should it be reinstated.
 4. On stay of execution, the applicant's case is that the respondent presented a letter dated 17/4/2024 seeking release of the money that was deposited in court as security at the time of lodging the appeal and he believes that the respondent is desirous of extracting the decree issued by the lower court. He adds that he stands to suffer irreparable harm if the appeal is not reinstated because the respondent's actions will deprive him of "his lawful property". He is of the view that the application was made in good faith and without unreasonable delay upon discovering the dismissal of the appeal.
 5. The applicant adds that the respondent's continued acts of destruction on the suit property, including cutting trees and damaging crops, are causing him immense loss and emotional distress.
 6. The respondent opposed the application through his undated replying affidavit and written submissions dated 10/3/2025, filed by Ms Hillary Sandi & Company Advocates. The applicant identified and submitted on three issues identical to those that were identified and canvassed by the applicant.
 7. The case of the respondent is that the application under consideration is frivolous and vexatious. He contends that the application was maliciously filed to waste precious judicial time. He adds that he fully executed the decree appealed against, hence the appeal has been overtaken by time. The respondent contends that the applicant is a knowledgeable man who has been litigating over the suit land for over 30 years, adding that in 1993, in a different cause that had been initiated by the applicant, the court



decreed eviction of the applicant from the suit land which was then known as Plot No. 67, in terms of the award of the Land Disputes Tribunal.

8. It is the respondent's case that closure of office by the applicant's previous advocate is not sufficient reason for failure to prosecute the appeal because if the applicant cared to do a follow-up, the Court Registry and the e-portal platform were available for the purpose of progressing prosecution of the appeal. The respondent adds that the delay of 8 months in bringing the application is unjustified.
9. The respondent contends that he will be highly prejudiced if the application is allowed because he fully executed the decree of the lower court, adding that the dismissed appeal, in any event, had zero chances of succeeding.
10. The court has considered the application, the response to the application and the parties' respective submissions. The applicant prayed for a multiplicity of orders. However, in his submissions, he identified and focused on only two substantive issues. The third issue he identified relates to costs of the application. The respondent too identified and submitted on the two substantive issues that had been identified by the applicant.
11. Consequently, I will dispose the application under consideration on the basis of the following two substantive issues which mirror the issues that the parties identified: (i) Whether the application satisfies the criteria for reinstatement/readmission of a cause or an appeal dismissed for want of prosecution; and (ii) Whether the application meets the criteria for grant of an order of stay of execution pending the hearing and disposal of an appeal.
12. Does the application meet the criteria for reinstatement or readmission of a cause or an appeal dismissed for want of prosecution? The jurisdiction to reinstate a cause or an appeal dismissed for want of prosecution is a discretionary one. The discretion is, however, exercised on the basis of well settled principles. The Court of Appeal for East Africa in *Shah V Mbogo & another* 91967) EA 116 outlined the following general principle on exercise of discretionary jurisdiction.

“The discretion is intended so as to be exercised to avoid injustice or hardship resulting from in adventure or excusable mistake or error but is not designed to assist a person who has deliberately sought whether by evasion or otherwise to obstruct or delay the course of justice”
13. One of the policy considerations that guide our trial courts when exercising this discretionary jurisdiction is the need for expeditious disposal of cases. In *Mobile Kitale Service station Vs Mobil Oil Kenya Limited & another* [2004] EKLRL the Court stated as follows:

“I must say that the courts are under a lot of pressure from backlogs and increased litigation, therefore it is in the interest of justice that litigation must be conducted expeditiously and efficiently so that injustice caused by delay would be a thing of the past. Justice would be better served if we dispose matters expeditiously. Therefore, I have no doubt the delay in the expeditious prosecution of this suit is due to the laxity, indifference and/or negligence of the plaintiff. That negligence, indifference, and/or laxity should not and cannot be placed at the doorsteps of the defendant. The consequences must be placed on their shoulders.”
14. The explanation tendered by the applicant to justify his inaction is that his previous advocate closed the Nanyuki office and relocated to a different town. The applicant did not identify the advocate by name. He did not disclose the month when the advocate closed the Nanyuki office. He did not disclose the town to which the advocate relocated. The court has considered the above explanation.



15. The record before court shows that this appeal was filed on 28/6/2022. Between 28/6/2022 and 26/5/2023, the appellant did not take any step to prosecute the appeal. The appeal was mentioned before the Deputy Registrar to confirm availability of the lower court file on 15/6/2023, 27/7/2023 and 28/9/2023. On 12/10/2023, Yano J admitted the appeal and listed it for mention before the Deputy Registrar to confirm filing of the record of appeal. By 16/11/2023 the appellant had not filed the record of appeal. The appellant was granted a further 30 days to file the record of appeal and the matter was listed for mention on 11/1/2024 to confirm compliance. On 11/1/2024, the court confirmed that the lower court file had been availed and directed the appellant to file the record of appeal before the next mention which was scheduled for 6/3/2024.
16. On 6/3/2024 the matter was listed before Yano J. Neither the appellant nor his advocate attended court on 6/3/2024. The court proceeded to give directions on the appeal. The court directed the appellant to file and serve written submissions within 14 days. In default, the appeal was to stand dismissed. The court listed the matter for directions on 16/4/2024 to confirm filing of submissions and fix a date for judgment.
17. On 16/4/2024 Yano J did not sit and the Court Registry fixed the appeal for mention on 16/7/2024. On 16/7/2024, there was no attendance by the appellant. Counsel for the respondent attended and submitted that he had all along duly served counsel for the appellant, adding that the appellant had failed to comply with the orders of the court requiring him to file the record of appeal and written submissions. Consequently, the court marked the appeal dismissed and awarded the respondent costs of the appeal.
18. By way of affidavit, the appellant has expressly stated that he learnt about the dismissal of this appeal on 12/10/2024 when the respondent forcibly entered the suit land, cut down trees and caused significant damage to the suit land. It emerges from the evidence presented and from the court record that no prompt steps were taken by the appellant to seek a re-instatement/re-admission of the appeal for the subsequent four (4) months. The present application is dated 13/2/2025 and was filed on 13/2/2025. No proper reason has been tendered to explain the inordinate delay of four (4) months from the date the appellant learnt about the dismissal of the appeal.
19. It is clear from the record and from the evidence that is before court that upon filing the memorandum of appeal on 28/6/2022, the applicant did not bother to file the record of appeal. Up to the time the appeal was marked “dismissed” on 16/7/2024, the applicant had not bothered to file the record of appeal. This is a period of over two (2) years. Several court orders were issued requiring the applicant to file the record of appeal but were ignored. Similarly, the applicant ignored the court order requiring him to file written submissions within 14 days. That is not all. Even after he learnt on 12/10/2024 that the appeal had been dismissed for want of prosecution, he did not bother to promptly bring an application for re-admission/reinstatement of the appeal. He brought the present application four (4) months after he learnt about the dismissal.
20. Taking into account the evidence presented and the record available to the court, it is clear that the applicant has failed to satisfy the criteria for reinstatement/re-admission of an appeal that has been dismissed for want of prosecution. That is the finding of the court on the first issue.
21. The appellant having failed to satisfy the criteria for reinstatement/re-admission, the plea for an order of stay of execution pending the hearing and disposal of the appeal fails on the ground that there is no subsisting appeal before this court.



22. On costs, there are no special circumstances to warrant a departure from the general principle in Section 27 of the *Civil Procedure Act* – that costs follow the event. Consequently, the applicant/appellant shall bear costs of the application.

DATED, SIGNED AND DELIVERED AT MERU THIS 8TH DAY OF MAY 2025

B M EBOSO [MR]

JUDGE

In the Presence of

Ms Lelaono for the Appellant/Applicant

Mr. Sandi for the Respondent

Court Assistant - Doris

