



**Ochieng v Odhiambo (Civil Appeal E006 of 2022)  
[2024] KEHC 14845 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 14845 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MIGORI  
CIVIL APPEAL E006 OF 2022  
A. ONG'INJO, J  
OCTOBER 17, 2024**

**BETWEEN**

**ALLAN ROBERT OCHIENG ..... APPELLANT**

**AND**

**JEREMIAH ODHIAMBO ..... RESPONDENT**

*(An Appeal from the Judgement and Decree of Hon. M.O. Obiero (SPM)  
dated and delivered on 24/9/2020 in Migori CMCC No. 80 of 2020)*

**RULING**

1. Notice of Motion application dated 26<sup>th</sup> January, 2024 was brought by the Appellant / Application – Allan Robert Ochieng pursuant to Order 45 Rule 1, Order 50 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules 2010 as well as Sections 1A, 1b, 3A and 95 of the *Civil Procedure Act* seeking for staying of execution of the Judgment and/or decree issued on 25/1/2022 in Migori CMCC No. 80 of 2020 pending hearing and determination of the application and the appeal herein.
2. The Appellant / Applicant also prayed that the Appellants appeal in Migori CMCC No. 80 of 2020 be reinstated to be heard and determined on merit and not procedural technicalities.
3. The Application is premised on the grounds on its face and affidavit sworn by Martha Mugo Advocate on 26.1.2024. The applicant's grounds are that on 25.10.2023 the Appeal came up for mention for directions but the same was dismissed for want of prosecution.
4. That the Applicant / Appellant was in the process of compiling and serving Records of Appeal which were yet to be typed and that he is still interested in pursuing the Appeal. That unless the appeal is reinstated and orders prayed for against the Respondent may at any time execute against the Appellant and the application will be rendered nugatory thereof exposing the Appellant to substantial loss and damages.



5. The Applicant asserted that the Appeal raises serious triable issues which require a just, proper evaluation and determination on merits as opposed to dismissal on technicalities. It is further argued that the decretal award on the lower courts is quite substantial in relations to damages and injuries sustained on the said award requires a proper review and/or re-evaluation by the court so as not to unjustly enrich one party.
6. The Application is opposed by the Replying Affidavit sworn by Evelyne Akinyi Kuke Advocate on 20<sup>th</sup> February 2024.
7. The Respondents counsel has averred that since the filing of the Appeal in May 2022 the Applicant had not taken any steps to prosecute the appeal and had not even applied for proceedings.
8. That when the Respondent realized the inordinate delay, they moved the court to Mention the Appeal for directions but the Appellant did not attend on 20.4.2023.
9. That subsequently an application to dismiss the Appeal was filed. That the application came up on 26.9.2023 and 25.10.2023 and notices were duly served upon the Appellant but there was no attendance.
10. That the Appellant was given ample time to prosecute the Appeal but failed to do so. The Respondent said that he has incurred expenses prosecuting the suit in the lower court and if the appeal is reinstated, he will suffer irreparable harm. He argued that the inordinate delay on filing the instant application and prosecuting the Appeal is unreasonable, intentional and the Appellant has not attempted to explain the reason for the delay. The Respondent urged the court to dismiss the application.
11. On 19.1.2023 the Appellants were granted orders of staying executions of the judgment in Migori CMCC No. 80 of 2020 and the sum of Kshs. 400,000/= deposit on 31.5.2022 deemed to have been duly deposited.
12. The Appellant was to file and serve Revord of Appel within 14 days of the date of Ruling concurrently with submissions. The matter was fixed for mention to confirm compliance on 14/3/2023. The Appellant failed to comply and by applications filed on 18.7.2023 the Respondent filed an application dated 26.6.2023 seeking that the appeal be dismissed for want of prosecution.
13. The said Application was duly served upon the Appellant / Applicant but on 25/10/2023 the parties were absent and the Application was allowed and appeal dismissed with costs.
14. The Applicant seeks to set aside the orders dismissing his appeal but on 23/7/2024 when application came up for hearing Ms. Cheronno Advocate who appeared for the Appellant informed the court that the matter was being handled by firms in Nairobi branch. She sought for directions but Ms. Kuke for Respondent informed the court that mention was to confirm compliance. She indicated that she had already filed her submissions on 27.5.2024.
15. The court set a date for ruling subject to the Appellant filing his submissions. However, there is no evidence of filing of the submissions by the Appellant in respect of the application dated 26/1/2024.
16. In the circumstances, the Appellant has not satisfied the court to warrant reinstatement of his appeal for hearing, Application dated 26.1.2024 is therefore dismissed. It is apparent that the Appellant has never been intersected in prosecuting the appeal herein and the application to reinstate the same was merely meant to waste courts time. The costs of the application to be paid by the Applicant / Appellant.

**DELIVERED DATED AND SIGNED AT MIGORI THIS 17<sup>TH</sup> DAY OF OCTOBER 2024.**



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**A. ONG'INJO**  
**JUDGE**

