



**Tegere v Chacha (Environment and Land Miscellaneous Application  
E005A of 2020) [2025] KEELC 5312 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 5312 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MIGORI  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E005A OF 2020**

**MN KULLOW, J  
JUNE 30, 2025**

**BETWEEN**

**SAMWEL MUNCHARI TEGERE ..... APPELLANT**

**AND**

**DOUGLAS CHACHA ..... RESPONDENT**

**RULING**

1. By Notice of Motion dated 8<sup>th</sup> February 2023, the Applicant sought for the following orders:-
  1. That this Honourable court be pleased to vary and set aside the orders dismissing his appeal dated 23<sup>rd</sup> January 2023.
  2. That this Honourable court be pleased to readmit the Appeal.
  3. Costs of the Appeal.
2. The Appeal was based on 11 grounds that appeared on the face of the application and the supporting Affidavit of Kiraruo Marua Advocate sworn on the 8<sup>th</sup> February 2023.
3. It is the Applicant's claim that he was directed by the court to file his appeal out of time on 30<sup>th</sup> November 2020 however when he had prepared the Record of Appeal he was not able to have it received at the registry since the court registry inadvertently failed to open a file for the main appeal that was assigned No. 18 of 2022 but they instead maintained the file number of Miscellaneous Application which ought to have been closed upon the grant of leave to file Appeal out of time.
4. The Applicant further contends that because of this inadvertence an order dismissing the Appeal was entered despite the Appellant filing a proper Memorandum of Appeal dated 19<sup>th</sup> July 2022.
5. Consequently, the Applicant contends it shall serve the interest of Justice to readmit and reinstate the Appeal pursuant to Article 159 of *the Constitution* of Kenya, 2010.



6. The Application was opposed by the Respondent by way of Replying Affidavit sworn on 20<sup>th</sup> February 2023, in which he avers that the Application is not based on any substantive law to support the relief sought and further states that no explanation has been offered to the inordinate delay and non-compliance with the order of the court.
7. That in view of the foregoing and without thorough explanation by the applicant of the delay, the orders sought cannot be granted.
8. I have considered the application by the Applicant, the Replying Affidavit in opposition and submissions by the parties.
9. It is my considered opinion that the only issue arising for determination is whether.
  - a. The applicant has made a case to vary and set aside the orders dismissing the appeal dated 23<sup>rd</sup> January 2023 and having the appeal readmitted.
10. The grounds for setting aside an ex-parte order and proceedings are now well settled. However, the court in determining whether or not to grant such discretionary order of setting aside and reinstatement, has a duty to exercise such powers judiciously, taking into account the circumstances of each case. The same ought not to be exercised based on sentiments or sympathy or arbitrarily in favor of an undeserving party
11. Order 12 Rule 7 of the Civil Procedure Rules provides that:-

“Where under this Order judgment has been entered or the suit has been dismissed, the court, on application, may set aside or vary the judgment or order upon such terms as may be just.”
12. The Court of Appeal in Richard Ncharpi Leiyagu vs Independent Electoral Boundaries Commission & 2 Others [2013] eKLR held that:-

“We agree with those noble principles which go further to establish that the court’s discretion to set aside an ex-parte judgment or order for that matter, is intended to avoid injustice or hardship resulting from an accident, inadvertence or excusable mistake or error but not to assist a person who deliberately seeks to obstruct or delay the course of justice.....”
13. Guided by the above decision; the question that follows is whether the applicant’s failure to attend court on 21.02.2023 constitutes a reasonable, excusable mistake or error and whether the alleged explanation of mis diarizing the hearing date qualifies as a sufficient cause and amounts to a genuine and inadvertent mistake on the part of applicant or whether the same was deliberate and thus imputing negligence and bad faith aimed at defeating the cause of justice on the part of the applicant.
14. I have critically considered the record in this matter and did find that the mistake in filing the Record was directly attributable to the registry and it will not serve the interest of justice to punish a party for a mistake at the registry. In the light of the provision of Article 159 of *the Constitution* of Kenya, 2010, and Section 1(a) and 2 (a) of the Civil Procedure Rule it shall be fair and expediate and in the interest of justice to readmit and reinstate the appeal.
15. In the upshot of the above, is I accordingly find the application dated 8<sup>th</sup> February 2023 is merited and I proceed to allow the same in the following terms:-
  - i. That the proceedings and orders of this court made on 23<sup>rd</sup> January 2023 in dismissing the appeal herein and all other such consequential orders thereof be and are hereby set aside.



ii. That the applicant's appeal is readmitted and reopened

iii. That each party shall bear its own orders.

It is so ordered!

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MIGORI ON 30<sup>TH</sup> DAY OF JUNE, 2025.**

**MOHAMMED N. KULLOW**

**JUDGE**

Ruling delivered in the presence of: -

N/A for the Appellant/Applicant

N/A for the Respondent

Philomena W. Court Assistant

