



ANG v ZNG (Family Appeal 46 of 2018) [2021] KEHC 9812 (KLR) (5 November 2021) (Ruling)

Neutral citation: [2021] KEHC 9812 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
FAMILY APPEAL 46 OF 2018
JN ONYIEGO, J
NOVEMBER 5, 2021**

BETWEEN

ANG APPLICANT

AND

ZNG RESPONDENT

RULING

1. The appeal herein was dismissed on the court’s own motion for want of prosecution on October 1, 2021. This was pursuant to issuance of a notice to show cause dated September 3, 2021. Consequently, the appellant filed an application dated October 4, 2021 seeking to reinstate the application dated November 12, 2018 and the draft memorandum of appeal which was dismissed for want of prosecution.
2. The application is anchored on the grounds set out on the face it and an affidavit sworn on October 4, 2021 by ANG. He averred that his application dated November 12, 2018 was scheduled for hearing on October 1, 2021 which day he could not join the virtual platform as he does not have a phone.
3. That he was assisted to join the virtual platform later in the day by which time he found his case had been call out and dismissed for want of prosecution. He stated that he is an old man aged 90 years hence his case should be handled physically and not virtually. That the appeal concerns land hence should be heard and all beneficiaries accorded an opportunity to ventilate their case.
4. Despite service of the application upon the respondent, he did not bother to file any response. During the hearing, the applicant basically adopted the content contained in his affidavit in support of the application.
5. I have considered the application herein and the affidavit in support. From the prayers sought, it would appear that the applicant does not understand the nature of the orders made on 1st October, 2021. Being a lay person I would understand.



6. To clarify the position , the orders of October 1, 2021 were made pursuant to a notice to show cause why the appeal filed herein and the application dated November 12, 2018 couldn't be dismissed for want of prosecution. Unfortunately, the applicant did not turn up hence the dismissal.
7. The appellant ought to have addressed non-attendance to show cause. However, he claimed that he tried to log into the virtual platform on October 1, 2012 but was unable due to old age. Although it is difficult to know the truth of the alleged inability to log in, I will give him a benefit of doubt on account of his age.
8. Accordingly, the Orders of October 1, 2021 are set aside and the applicant given an opportunity to show cause why the application dated November 12, 2018 should not be dismissed for want of prosecution. Hearing on 17th November, 2021.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 5TH DAY OF NOVEMBER, 2021

J. N. ONYIEGO

JUDGE

