



**Katuga v Omuga & 5 others (Environment and Land Miscellaneous Case E054 of 2023) [2025] KEELC 4685 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4685 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND MISCELLANEOUS CASE E054 OF 2023**

**YM ANGIMA, J**

**JUNE 19, 2025**

**BETWEEN**

**LEONARD MUGUSA KATUGA ..... APPELLANT**

**AND**

**BONIFACE ODIRA OMUGA ..... 1<sup>ST</sup> RESPONDENT**

**IRENE MWAHAKI NDUNG'US ALIAS LILY UMAZI KADZO .... 2<sup>ND</sup>  
RESPONDENT**

**LAND REGISTRAR MOMBASA ..... 3<sup>RD</sup> RESPONDENT**

**IRENE MWIHAKE NDUNG'U ..... 4<sup>TH</sup> RESPONDENT**

**ASHEEY JUMA MBARAK ..... 5<sup>TH</sup> RESPONDENT**

**GLADYS MUENI SEVU ..... 6<sup>TH</sup> RESPONDENT**

**RULING**

**A. Appellant's application**

1. By a notice of motion 12.02.2025 expressed to be brought pursuant to Article 159 of the Constitution of Kenya, Sections 1, 1A, 3A, 63 (e) and 80 of the Civil Procedure Act (Cap. 21) Order 12 Rule 7, Order 45 Order 51 of the Civil Procedure Rules and all other enabling provisions of the law, the appellant sought the following orders;
  - a. The order made on 29.01.2025 dismissing the appeal be reviewed, varied or set aside.
  - b. That the application dated 12.03.2024 which was dismissed for want of prosecution be reinstated.
  - c. Costs of the application be provided for.



2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the appellant, Leo M. Katuga, on 12.02.2025. The gist of the application was that the appellant's failure to attend court on the material date was due to a technical hitch which prevented the advocate who was holding his brief from joining the virtual session. The appellant therefore prayed for a chance of being heard on merit since he was not to blame for his failure to attend the virtual court on 19.01.2025.

### **B. Respondents' response**

3. The 1<sup>st</sup> respondent filed a replying affidavit sworn by himself on 17.03.2025 in opposition to the application. The 1<sup>st</sup> respondent did not believe the reason advanced by the appellant as genuine and questioned why the holding brief advocate did not swear any affidavit in support of the application. It was contended that the appellant had not come to court with clean hands since he had previously filed an appeal out of time which was struck out by the court. The rest of the averments in the replying affidavit touched on the merits of the intended appeal and application for stay of execution.
4. The 6<sup>th</sup> respondent also filed a replying affidavit sworn by herself on 16.04.2025 in opposition to the application. It was contended that no good reason has been advanced by the appellant to warrant the reinstatement of the dismissed application. It was contended that the appellant had filed similar applications before which were dismissed by the court. It was thus contended that even the application of 12.03.2024 was *res judicata*.
5. There is no indication on record of the rest of the respondents having filed any responses to the application.

### **C. Directions on submissions**

6. When the application was listed for directions it was directed that the same shall be canvassed through written submissions. The record, however, shows that none of the parties had filed submissions by the time of preparation of the ruling.

### **D. Issues for determination**

7. The court has perused the appellant's notice of motion dated 12.02.2025, the 2 replying affidavits in opposition thereto as well as the material on record. It would appear from a perusal of the court file that only the appellant's application dated 12.03.2024 was dismissed for want of prosecution on 29.01.2025. There is no indication of the appeal itself having been dismissed. The court is thus of the view that main question for determination is whether or not the appellant has shown sufficient cause to warrant reinstatement of his application dated 12.03.2024. The ancillary issue is the question of costs.

### **E. Analysis and determination**

8. The court has considered the material and affidavits on record on the matter. There is no doubt that the proceedings of 19.01.2025 were conducted virtually via Microsoft Teams platform. It is a matter of which the court can take judicial notice that from time to time litigants and advocates experience technical glitches in joining the platform. On some occasions even judicial officers encounter technical challenges in joining the platform.
9. The court finds no reason to doubt the application by the appellant who is an advocate and an officer of this court. It is not the first time for such technical failure to occur in online sessions and it may not even be the last time. The court is thus satisfied that the appellant has given a reasonable explanation



for his absence on 19.01.2025 which constitutes sufficient cause to warrant a review and setting aside of the dismissal order and reinstatement of his application dated 12.03.2024 for hearing on merit.

## **F. Conclusion and disposal orders**

10. The upshot of the foregoing is that the court finds merit in the appellant's application dated 12.02.2025 hence makes the following disposal orders;
  - a. The dismissal order made on 19.01.2025 is hereby reviewed and set aside.
  - b. The appellant's application dated 12.03.2024 is hereby reinstated for hearing on merit.
  - c. The respondents shall file and serve their responses to the notice of motion dated 12.03.2024 within 14 days from the date hereof.
  - d. The appellant shall file and serve his written submissions and a further affidavit (if necessary) within 14 days upon service of responses.
  - e. The respondents shall file and serve their submissions within 14 days upon the lapse of the appellant's period specified in paragraph (d) hereof.
  - f. Costs of the application dated 12.02.2025 shall be in the cause.
  - g. Ruling on notice of motion dated 12.03.2024 shall be delivered on 23.10.25

Orders accordingly.

**RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 19<sup>TH</sup> DAY OF JUNE, 2025.**

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**Y. M. ANGIMA**

**JUDGE**

In the presence of:

Gillian - Court assistant

No appearance for appellant

No appearance for 1<sup>st</sup>-6<sup>th</sup> respondents

