



**Onyango v Khamala (Environment and Land Appeal  
E008 of 2024) [2025] KEELC 5104 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 5104 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MIGORI  
ENVIRONMENT AND LAND APPEAL E008 OF 2024  
FO NYAGAKA, J  
JUNE 19, 2025**

**BETWEEN**

**DEBORA ADHIAMBO ONYANGO ..... APPELLANT**

**AND**

**JOHN KHAMALA ..... RESPONDENT**

**RULING**

1. What is pending before this court is the Notice to Show Cause as to why this matter should not be dismissed.
2. The Appellant instituted this Appeal vide a Memorandum of Appeal dated 17/04/2024 and, according to the record, took no further steps to prosecute the same. On 28/01/2025, the Appellant was directed to file a certified copy of the order appealed from within 14 days within the terms of Order 42 Rule 2 of the Civil Procedure Rules. Further, to have the Appeal placed before a judge within 30 days for directions, and in default of which, the appeal was to be placed for hearing of the Notice to Show Cause why it should not be dismissed for want of prosecution.
3. The Appellant failed to comply, and the Notice to Show Cause was issued. The Appellant filed a Replying Affidavit dated 24/04/2025. She stated that she is keen on prosecuting the matter and had applied for certified proceedings and the ruling vide a letter dated 17/04/2024, a copy of which she annexed. Further, that they paid for the same on 18/04/2024 and have been following up on the same but the proceedings are yet to be typed as at 21/03/2025. She urged that it is for these reasons that the appeal has stagnated and prayed the court not to dismiss the appeal.



## **Analysis & Disposition**

4. The power to dismiss a suit for want of prosecution is governed Order 17 of the Civil Procedure Rules. Order 17 Rule 2(1) of the Civil Procedure Rules provides as follows:

“In any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.”
5. Order 42 Rule 2 of the Civil Procedure Rules provides for the filing of a certified copy of the decree or order appealed against either with the memorandum of appeal or so soon thereafter and or within a time as the court may order, for the purpose of the court considering whether to reject the appeal summarily under section 79B of the Act or not.
6. Order 42 Rule 11 provides for the listing of an appeal, by the Appellant, within thirty days of filing it before a judge for its consideration under Section 79B of the Act, that is to say, whether to admit or reject it. The onus is on the appellant to move the Court in that respect.
7. It is clear that in regard to appeals, order 17 Rule 2(1) is inapplicable, particularly where the issue is noncompliance with steps in preparation for the proceeding of an appeal. Thus, for the instant Notice to Show Cause, the applicable Rules are Order 42 Rules 2, 11, 12 and others, of the Civil Procedure Rules.
8. I have considered the Replying Affidavit dated 24/04/2025 and the averments therein. It is evident that the Appellant has tried to obtain the typed proceedings from the trial court vide the letter dated 17/04/2024. Despite that, there is no proof that the appellant has attempted to obtain the typed proceedings any further. However, as the Appellant has a constitutional right to be heard, and given that he has explained although feebly that he has tried his best to have the appeal move forward. I am convinced on a balance of probability that cause has been shown. I am inclined to grant the Appellant one more chance to prosecute the Appeal as the delay is due to the delay of the trial court to avail the typed proceedings.
9. Therefore, the court is satisfied that the Appellant has given sufficient cause as to why the suit should not be dismissed. The Notice to show cause is dismissed but on condition that the appellant files the Record of appeal within the next fourteen (14) days to file the Record of Appeal in default the appeal shall stand struck out with costs, automatically.
10. The appeal shall be mentioned on 7<sup>th</sup> July, 2025 for further directions, subject to the fulfillment of the condition given above.
11. Orders accordingly.

**RULING DATED SIGNED AND DELIVERED VIA THE TEAMS PLATFORM THIS 19<sup>TH</sup> DAY OF JUNE 2025.**

**HON. DR. IUR NYAGAKA,**

**JUDGE**

In the presence of,

Marvin Odero Adv. for the Appellant.

Singei Adv. for Abisai Adv. for the Respondent.

