



**Westpoint Reality Limited & 2 others v Salat (Environment and Land
Appeal E059 of 2021) [2025] KEELC 4679 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4679 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E059 OF 2021**

**JG KEMEI, J
JUNE 19, 2025**

BETWEEN

WESTPOINT REALITY LIMITED 1ST APPELLANT

HASSCONSULT LIMITED 2ND APPELLANT

HASSCONSULT REAL ESTATE 3RD APPELLANT

AND

BASHIR BILLE SALAT RESPONDENT

(With Respect to the Respondents Notice of Motion dated the 17/3/25)

RULING

1. Aggrieved by the decision of the trial court in MCELC No E1417 of 2020 delivered on the 4/8/21 the Appellants proffered an appeal to this court by way of a Memorandum of Appeal dated 17/8/21 and cited 8 grounds. The appellants urged the court to allow the appeal with costs, set aside the judgment and all consequential orders of the trial court delivered on the 4/8/21 and dismiss the respondents suit in MCELC No1417 of 2020.
2. Vide the instant motion dated the 17/3/25 the Respondent/applicant moved this court seeking a single prayer of dismissal of the appeal for want of prosecution. The application is based on the grounds annexed thereto and the supporting affidavit of the applicant one Bashir Bille Salat sworn on even date.
3. The deponent avers that the respondents have failed to prosecute the appeal for over 4 years since it was filed. He cited instances when the respondents counsel informed the court that he was having difficulty in obtaining instructions from his clients and on 29/1/25 successfully sought time to file notice to cease acting. Despite being granted leave to do so he has yet to comply and on the 11/3/25 the respondents counsel was absent in court and failed to provide any update on the status of the appeal and how he



- intended to prosecute it. That to date no record of appeal has been filed and the prolonged delay is prejudicial to the applicant since he cannot enjoy the fruits of his judgement in his favour.
4. The court was urged to be guided by the provisions of Art 159 of *the Constitution* in as far as expedient disposal of cases is concerned and the provisions of Order 42 rule 35 (1) of the Civil Procedure Rules.
 5. Order 42 rule 35 of the Civil Procedure Rules states as follows;
 - “(1) Unless within three months after the giving of directions under rule 13 the appeal shall have been set down for hearing by the appellant, the respondent shall be at liberty either to set down the appeal for hearing or to apply by summons for its dismissal for want of prosecution.
 - (2) If, within one year after the service of the memorandum of appeal, the appeal shall not have been set down for hearing, the registrar shall on notice to the parties list the appeal before a judge in chambers for dismissal”.
 6. The court observes that save for the Memorandum of Appeal filed on record the appellants have not taken any steps towards the prosecution of the appeal. Pursuant to the provisions of Order 42 Rule 35 (1) of the Civil Procedure Rules, the respondent is entitled to list the appeal for dismissal on notice. The court is satisfied that the motion herein was served and as evidenced with the affidavit of service on record. The notice has not elicited any response from the appellants.
 7. Despite service, the appellants failed to file any response to the motion by close of business 18/4/2025 and contrary to the directions given by the court on 4/4/2025. The application is therefore undefended.
 8. It is now a constitutional imperative that suits must be heard and determined expeditiously. The provisions of Section 1A, 1B and 3A of the *Civil Procedure Act* engenders litigants and their advocates to promote and support the overriding objectives of the court inter alia as to the expedient determination of cases. The adage justice delayed is justice denied holds sway in the instance of this appeal.
 9. For the above reasons the application is allowed. Consequently, the motion is allowed with no orders as to costs.
 10. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 19TH DAY OF JUNE, 2025
VIA MICROSOFT TEAMS.**

J G KEMEI

JUDGE

Delivered Online in the Presence of;

Mr. Onindo for the 1st – 3rd Appellants

Mr. Hassan for the Respondents

C/A – Ms Yvette Njoroge

