



REPUBLIC OF KENYA



KENYA LAW
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**Jarex v Easy Coach Limited (Civil Appeal E423 of 2023)
[2025] KEHC 13810 (KLR) (12 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13810 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E423 OF 2023
DO CHEPKWONY, J
SEPTEMBER 12, 2025**

BETWEEN

MAGOMA ARUMBA JAREX APPLICANT

AND

EASY COACH LIMITED RESPONDENT

*(Being an Appeal from the Judgment and Decree of Honourable Lilian N. Kwamboka,
Resident Magistrate in Kikuyu dated 31st October, 2023 in Kikuyu CMCC No.E02 of 2020)*

RULING

1. Before the court for determination is the Notice of Motion application dated 3rd September, 2024 seeking the following orders:
 - a. That the Honourable Court be pleased to set aside the orders of 3rd June, 2024 dismissing the Applicant's appeal herein for want of prosecution and reinstate the same and allow it to be heard and determined on merits.
 - b. That costs of this application be provided for.
2. The Application is based on the grounds set out on its face and the Supporting Affidavit of Magoma Atumba Alex sworn on even date. It is the Applicant's case that he was not served with any Notice to Show Cause why the appeal should be dismissed for want of prosecution. He states that he had already filed a Record of Appeal and is ready and desirous of prosecuting the appeal. The Applicant contends that he stands to suffer irreparable loss if the dismissal orders are not set aside and prays that the appeal be admitted for hearing for it to be determined on merit.
3. The Application is opposed through the Replying Affidavit sworn by Hellen Omiti, as the Legal Officer of the Respondent on 26th May, 2025. According to the deponent, the Applicant filed the suit in the year 2020 which suit was determined in October, 2023 and the Respondent satisfied the Judgment.



The Respondent contends that it was not aware that the Applicant had lodged an appeal and was only served with the present application in which the Applicant is seeking to reinstate the same. The Respondent holds that from the Case tracking system, the Applicant had not taken any steps in the appeal which led the court to dismiss the same. The Respondent holds that all the steps taken by the Applicant to request for mention dates were after the appeal was dismissed and the applicant had not given any reasons for his inactiveness in the matter and therefore has not shown why the court should exercise its discretion and reinstate it and therefore urges the court to dismiss it.

4. Pursuant to the court's directions issued on 7th April, 2025, the application was to be canvassed by way of written submissions but only the applicant filed the same dated 23rd May, 2025. He reiterates that the appeal was dismissed without first issuing a Notice to Show Cause. That he had a hard time obtaining certified copies of the lower court proceedings in order to compile the Record of Appeal so as to prosecute the appeal. He holds that it was unjust and unfair to dismiss the appeal and it would be in the interest of justice that the orders dismissing the appeal be set aside. He has urged the court to exercise discretion in line with the case of Shah –vs- Mbogo [1967] EA 116 and that the court should opt for the lower rather than the higher risk of injustice as determined in the case of Lucy Bosire –vs- Kehancha Div Land Dispute Tribunal & 2 Others [2013]eKLR.

Analysis and Determination

5. Before delving into the merits of the application on reinstatement of the appeal, the court shall give the chronology of events in this Appeal. The Judgment of the trial court was delivered on 31st October, 2023, aggrieved by the same, the Appellant filed the Memorandum of Appeal dated 16th November, 2023. The court issued directions on the Appeal on 9th May, 2024, whereby the appeal was admitted for hearing and the Appellant was directed to file Record of Appeal within twenty-one (21) days and the matter was to be mentioned before the Deputy Registrar on 27th May, 2024 for parties to confirm compliance on the said directions. On this 20th May, 2024, the Deputy Registrar further directed the Appellant and Respondent to file their submissions and the matter to be cause-listed for the RRI Programme.
6. On 3rd June, 2024 when the matter was placed before Lady Justice A. Onditi for mention, she noted that the parties were absent and neither Record of Appeal nor submissions had been filed as directed. The Honourable Judge then proceeded to dismiss the appeal for want of prosecution. This is what has precipitated the filing of this instant application.
7. It is trite that courts are urged to take guidance in the provisions of Article 159 (2)(d) of [the Constitution](#) of Kenya, 2010 which provides:-

“In exercising judicial authority, the courts and tribunals shall be guided by the following principles –

- (d). Justice shall be administered without undue regard to procedural technicalities;

8. In this case, a perusal of the record shows that on 9th May, 2024 the Directions on the appeal were issued in the Chamber and in the absence of the parties. Thereafter, further directions were also issued by the Deputy Registrar in absence of the parties and so was the dismissal of the appeal for want of prosecution by the court on 3rd June, 2024. Upon a further perusal of the record, this court finds that there is no indication that the parties and or their respective counsel were aware of the directions of the court to confirm their laxity in the matter since there is no Affidavit of Service filed. It would have been prudent for the court to issue notice to the parties to show cause why the appeal should not



be dismissed for want of prosecution instead of dismissing the same less than one month after the directions had issued.

9. The law on dismissal of appeal for want of prosecution is provided for under Order 42 Rule 35 of the Civil Procedure Rules as follows:-

[Order 42, Rule 35.] Dismissal for want of prosecution.

35(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.

10. From the said provisions, this court finds that it was premature for the court to dismiss the appeal for want of prosecution barely a month after issuance of directions on admission and disposal of the appeal. In any event, a delay in filing of pleadings or compliance of directions would qualify as mere procedural technicalities that would not go into the substance of a suit and or prejudice the sacred right of fair trial.
11. For those reasons, in exercise of its discretion, the court proceeds to find the Notice meritable and allows the same in the following terms:-
- a. The orders issued on 3rd June, 2024 dismissing the appeal be and are hereby set aside.
 - b. The appeal is hereby re-instated for hearing and determination on merit.
 - c. Given that the appeal had already been admitted and the Applicant/Appellant has filed the Record of Appeal, the parties to file and exchange their respective written submissions within thirty (30) days of each other, with the Appellant going first.
 - d. Mention on 13th November, 2025 for parties to confirm compliance and take a Judgment date.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 12TH DAY OF SEPTEMBER , 2025.

D. O. CHEPKWONY

JUDGE

In the presence of:

Mr. Nganga holding brief for Mr. Karanja counsel for the Respondent

No appearance for Appellant

Court Assistant - Kinyua

