



REPUBLIC OF KENYA



**Chesika & 4 others v Kisika & 7 others (Environment and Land Appeal  
E007 of 2023) [2025] KEELC 66 (KLR) (21 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 66 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND APPEAL E007 OF 2023**

**CK NZILI, J**

**JANUARY 21, 2025**

**BETWEEN**

**JOSEPH WASIKE CHESIKA & 4 OTHERS ..... APPELLANT**

**AND**

**NATHAN WEKESA KISIKA & 7 OTHERS ..... RESPONDENT**

**RULING**

1. What is before the court is an application for reinstatement of an appeal dismissed on 22/5/2024, for want of prosecution. The reasons are contained on the face of the application dated 25/5/2024 and in a supporting affidavit of Mua Wambua Mark Advocate. The advocate avers that while a NTSC was served upon him, he had network challenges on the mention date. He says that he was also engaged in Nakuru Court of Appeal No. 124 of 2020, hence the non-appearance was not intentional.
2. Counsel says that there was an error apparent on the face of the record for one year had not lapsed for Order 42 Rule 35(2) C.P.R. to be invoked for the appeal to be ripe for dismissal, since directions had not been given.
3. Learned counsel says that it is in the interest of justice to reinstate the appeal, the applicants are yet to be supplied with the lower court proceedings, so as to file the Record of Appeal.
4. The applicants say that they stands to suffer more than the respondents if the appeal is not reinstated, otherwise they have filed the application without delay.
5. The application is opposed through a replying of Joseph Kamau sworn on 14/6/2024 on the following grounds:
  - (1) That both counsels on record had been served with the NTSC.
  - (2) That there was no representation for the appellants when the matter was called out.



- (3) That there are no good reasons warranting a review of the orders
6. The applicants rely on written submission dated 7/11/2024 and invite the court to be guided by the case law of Philip Chemwolo & Another -vs- Augustine Kubende [1986] eKLR.
  7. To reinstate or not reinstate a dismissed appeal is a discretionary power of the court to be exercised judiciously. The guiding principles to consider were set out in Ngugi -vs- Thogo (Civil Application 373 of 2018) [2021] KECA 88 [KLR] (22<sup>nd</sup> October, 2021) (Ruling) and in Kihuyu Ndirangu -vs- Reuben Kinyanjui [2002] eKLR.
  8. Sufficient and plausible cause for non-attendance must be shown. An explanation for the delay in compliance must be given. The basis of granting the relief must be clear. This court has to consider also Article 159 2(d) of *the Constitution* on substantive justice. Prejudice to the opposite party if reinstatement is granted has to be indicated by the respondents.
  9. Applying the guiding principles, the applicants have given an explanation for non-attendance. The respondents have not refuted that explanation. The prejudice to be suffered by the respondents has not been indicated. The respondents have not said that the subject matter of the appeal has changed such that the reinstatement of the appeal would be in vain due to change of circumstances.
  10. I therefore allow the application with costs to the respondents. Lower court file be availed. Mention before the Deputy Registrar on 6/2/2025.

**RULING DATED, SIGNED AND DELIVERED AT KITALE THIS 21<sup>ST</sup> DAY OF JANUARY, 2025.**

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

