



REPUBLIC OF KENYA



**KENYA LAW**  
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**Omondi v Ouma (Civil Appeal E130 of 2021)  
[2025] KEHC 13772 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13772 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL APPEAL E130 OF 2021  
SM MOHOCHI, J  
OCTOBER 2, 2025**

**BETWEEN**

**DAVID OMONDI ..... APPELLANT**

**AND**

**BARRACK TAABU OUMA ..... RESPONDENT**

**RULING**

1. This Court in its ruling dated 30<sup>th</sup> November 2023 allowed the Applicant's Application, reinstated the dismissed Appeal, allowed change advocates and directed the Appeal be set down for hearing in 60 days. The Appellant failed to comply hence the instant Application.
2. Following the failure to comply the Applicant moves the Court in its notice of motion filed pursuant to Order 45 Rule 1 of the *Civil Procedure Rules* 2010 and Section 3 & 34 of the *Civil Procedure Act* Article 159 of the *Constitution* of Kenya 2010 and all other enabling provisions of the law seeking the following reliefs;
  1. That this Honorable Court be pleased to vary and/or review its orders in the Ruling delivered on the 30<sup>th</sup> day of November 2023
  2. That this honorable Court be pleased to extend time within which the Record of Appeal can be filed and directions given
  3. That in view of prayer 2 above, the record of appeal dated 5<sup>th</sup> day of July 2024, filed in Court on the even day and served on the 11<sup>th</sup> day of September 2024, be deemed property filed.
  4. That costs of this application be in the cause
3. The Application is supported by the sworn affidavit by the Applicant and is anchored on the following grounds;



- i. That, on 30<sup>th</sup> November, 2023 this Honorable Court delivered a Ruling and subsequent directions.
  - ii. That, the said Ruling was delivered at 2:30pm whilst counsel for the appellant appeared virtually during morning sessions.
  - iii. That, owing to technical hitch, counsel for the Appellant did not hear the honorable Court's directions as to the time the ruling would be delivered.
4. The Applicant further deposed that at the time of delivery of the said ruling he together with his advocate on record were seated in his chambers as early as 9.00 am with all the hopes of receiving the ruling in the morning and around 11.00am the same day he left his Advocate in his chambers still glued to his gadget as I was rushing to Kisumu on a Church mission and at around 12.30pm, his advocate called him and informed him that there was some technical hitch during the session and that he did not hear the matter being called and that since the Honorable Court had taken a break, it would only be advisable to check out the file later in the registry.
  5. That owing to what counsel advised him he concurred with him and agreed that they would follow up the file from the registry shortly.
  6. That he was informed by his advocate that he followed up on the matter the following day of 1st December 2023 and was advised that the files had not been returned from the Judge's Chamber.
  7. That immediately he came back from Kisumu, he proceeded to the registry to check on the status of the file and he confirmed his Advocate's sentiments.
  8. That, with the help of the registry staff, the file could not be traced and it was at that point that the said staff advised him that sometimes the files get delayed from the chambers and that they had no authority to follow such a file until when it is duly returned to the registry.
  9. That he did not have any doubts with the advice from the registry staff and who also undertook to call him the moment the file was realized.
  10. That, the search for the said file, took longer to an extent that he had to seek some clarifications from the Honorable Court's assistant who indeed advised him that according to her diary and movement register, she had not seen that file and neither did she return it to the registry. She equally undertook to inform him the moment she came across the file incase the same was with the Honorable Judge.
  11. That, sometime in the month of April 2024, whilst still in pursuit of the file, the court assistant informed him that she had spotted the file at the Honorable Judge's chamber but since she was not sure of the status, she could not remove it from the said chamber. He agreed with the said court assistant and they both agreed to wait until the Honorable Court releases the file.
  12. That, on the 9th day of May 2024, the Court assistant called him and advised him to proceed to the registry since the file had been taken there from the Honorable Judge's chambers.
  13. That, he did not hesitate but immediately rushed to the registry where he indeed saw the file and requested for a copy of the ruling which he was given and acknowledged by signing and dating at the Court copy.
  14. That he immediately upon reading the said Ruling, called his Advocate and informed him of the status upon which he advised him to request for a mention date so as to seek further directions owing to the complexity of the matter.



15. That he rushed with the copy to his advocate who immediately prepared a Record of Appeal and had a date fixed for directions without delay.
16. That, the circumstances surrounding the file from the time the ruling was delivered to the time he was able to access the physical file, were well beyond his control and nothing done thereto was malicious in any way.
17. That, his advocate on record have since written to the Deputy Registrar High Court seeking an excerpt of the movement to actually set the record straight.
18. That, he further wish to state that the foretasted matters were technical in nature and as such this Honorable Court should kindly consider and apply leniency.
19. That, the appeal on record is an appeal with very high chances of success and it would only be fair and just if the Honorable Court allows it to reach its logical conclusion rather than dismissing it on technicalities as is the wish of the respondent.
20. The Respondent on his part filed a Notice of Preliminary Objection dated 10<sup>th</sup> July 2023, wherein they argued that the Advocate was unqualified and under suspension and hence the Court should strike off all pleadings filed herein.
21. The Application is opposed vide the Replying Affidavit dated 16<sup>th</sup> December 2024 generally maintaining that the Applicant deserves no equitable relief as he is of unclean hands.
22. The Respondent depones that, the Appeal was instituted through a Memorandum of Appeal dated 23<sup>rd</sup> November 2021 the Appeal lay moribund and by 26 January 2023 the same was dismissed for want of prosecution and the Appellant was condemned to costs.
23. That it was only when he commenced recovery of his costs that the Applicant awoke from his slumber and moved this Court on the 24<sup>th</sup> April 2024 the Application which ruling on the 30<sup>th</sup> November 2024 is now forming the substratum of the Application for review.
24. That no Application has been filed by the Applicant for the revival or reinstatement of the dismissed appeal.
25. That for the Application for Review of the Ruling delivered on 30<sup>th</sup> November 2023 to be successful, the Applicant must demonstrate the following:
  - i. That there exists an obvious error on the face of the Record.
  - ii. That there is discovery of a new matter or evidence which was not available to the Applicant during the hearing of the Application and which even with due diligence on the part of the Applicant he could not have obtained such new matter/evidence at that time.
  - iii. That he (the Applicant) must move the Court on an Application for Review without an inordinate delay.
  - iv. That the Ruling was delivered in favor of the Appellant way back on 30<sup>th</sup> November 2023 and it was not until 1<sup>st</sup> October 2024 (a period of Eleven Months or 300 days) that the present Application was filed.
26. That, a period of eleven months/300 days is inordinately a very long period of time which has not been sufficiently explained or explained at all.



27. That, the Applicant appears to lay the blame on the Court for what he says is the non-availability of the Court file and thinly suggesting that the Court file remained in His Lordship's chambers for months on end. This is quite ridiculous because with the technology a party needs to get the results even from the CTS.
28. That, there is no error on the face of the record to warrant a Review and indeed some have been mentioned.
29. That, there is no discovery of any new matter or any new evidence mentioned by the Applicant.
30. That, it is the second time that the Appellant's Appeal has been dismissed not at the own instance because this Appellant has not exhibited any interest in prosecuting this Appeal.
31. That, the Appellant is such an unfortunate litigant? His view of this is that he is indolent, dilatory, and generally disinterested and he can only be woken up from his slumber once his Appeal has been dismissed.
32. That, this Appellant has perfected in filing and abandoning his Appeals arising out of the same cause. By a Memorandum of Appeal dated 2<sup>nd</sup> June 2022, he filed an Appeal which he altogether forgot and it is still gathering dust in the Court's Civil Registry.
33. That the Court had reinstated the Appeal on Conditional Order that lapsed automatically vacating any orders thereon.
34. The Court directed that, the Application shall be heard and disposed of by way of written submissions.
35. Parties duly complied by filing written submissions dated 27<sup>th</sup> March 2024 for the Respondent and 21<sup>st</sup> May 2024 for the Applicant.

### **Applicants Submission**

36. The Applicants submission that he seeks review of the 30<sup>th</sup> November 2023 ruling under Order 45 Rule 1, which permits review on the following permissible grounds:
37. That the inability to access the ruling and file the Record of Appeal within the stipulated time constitutes a sufficient reason akin to new evidence.
38. That in *Erastus Mwanza Mwambingu v Kenya Commercial Bank Ltd* [2022] eKLR, the Court held that administrative delays in accessing court documents can justify review.
39. That the automatic dismissal clause in the ruling did not account for external delays caused by the Court's registry. The Supreme Court in *Raila Odinga & 5 Others v IEBC & 3 Others* [2017] eKLR emphasized that procedural rigidity should not override substantive justice. It stated;
 

“The Court as an agency of the process of justice is called upon to appreciate all the relevance conscious and the requirements of a particular case and conscientiously determine the best course”
40. The Constitutional imperative under Article 159(2) (d) mandates Courts to dispense justice without undue technicalities. In *Samuel Kamau Macharia v KCB & 2 Others* [2012] eKLR, the Court held that justice should not be sacrificed at the altar of procedural strictness.



41. That, the Respondent alleges an 11-month delay, but the Appellant has demonstrated that: The ruling was only accessible in May 2024, and the application was filed promptly thereafter. The delay was not deliberate but caused by Court administrative challenges.
42. Reference is made to the Court of Appeal judgment in the case of *Leah Wambui Gachau v Pioneer Holdings (A) Ltd & 2 Others* [2020] eKLR where it was held
- “Where delay is sufficiently explained, Courts should not penalize litigants for circumstances beyond their control.”
43. That, the Applicant has consistently pursued the matter, as evidenced by:
- a. Follow-ups with the
  - b. Filing the Record of Appeal immediately upon accessing the ruling.
44. That, the Respondent’s claim of indolence is baseless, as held in *Kitinji Marete v Attorney General* [2018] eKLR, where the Court ruled:
- “A litigant who demonstrates bona fide efforts to prosecute a case should not be penalized for delays caused by the Court system.”
45. In light of the foregoing, it is just and equitable for this Honorable Court to:
- a. Review and vary the orders of 30th November 2023 to extend the time for filing the Record of Appeal.
  - b. Deem the Record of Appeal dated 5th July 2024 as properly filed\*.
  - c. Grant costs of this application to abide the outcome of the appeal\*.
46. The Respondent submitted at length as to how the Application fails the test provided for grant of review orders sought.

### **Analysis and Determination**

47. The Applications of this nature and those giving rise to this Application were essentially seeking equitable reliefs that are discretionary to the Court.
48. This Court equally takes a dim view of the construct of the missing file from December 2024 to May 2024 when it is on record the Applicant collecting the impugned ruling.
49. The reason for delay and accounting for the period of delay must be elaborates with clarity and precision to enable the Court to arrive at such a finding.
50. The principals herein crystalized in the [\*Nick Salat v Independent Electoral and Boundaries Commission & 7 others\*](#) the Supreme Court observed as follows: -

... In those circumstances, it is incumbent on the Applicant for an extension of time to provide the Court with a full, honest and acceptable explanation of the reasons for the delay. He cannot reasonably expect the discretion to be exercised in his favour, as a defaulter, unless he provides an explanation for the default.



51. While the Applicant claims to have undertaken a search of the file in the registry no formal document on record either from Mr Gati Advocate or the Applicant himself looking for the file, applying for the ruling or otherwise undertaking any action in furtherance of the Ruling of actualization of the Appeal.
52. The Applicant has all along been represented by counsel but it would appear that after this Court delivered its Ruling on 30<sup>th</sup> November 2023, the Advocate went missing in action and the entire body of evidence is that the Applicant was personally searching for his file, discussing and getting unverified commitments from Court officials on occasions or dates undisclosed. One wonders of the absence of counsel.
53. The Presumptuous filing of a Record of Appeal long after 60 day window out of time, without leave of the Court is moot and such proceedings cannot be sanitized or legitimized in such an interlocutory Application the prayer for the same is untenable in law.
54. The discovery of new and important matter is lacking in this motion and cannot be by inference, there is no other sufficient reason to warrant a review.
55. The Application is bereft of merit and I have no hesitation in dismissing the same with costs to the Respondent.

It is So Ordered.

**SIGNED, DATED AND DELIVERED AT NAKURU ON THIS 2<sup>ND</sup> DAY OF OCTOBER 2025.**

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**JUSTICE MOHOCHI S.M.**

**JUDGE**

