



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kimani & 2 others v London Distillers (K) Ltd & another (Environment and Land Appeal E001 of 2020) [2025] KEELC 6727 (KLR) (7 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6727 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND APPEAL E001 OF 2020**

**AY KOROSS, J**

**OCTOBER 7, 2025**

**BETWEEN**

**PAUL MUNGAI KIMANI ..... 1<sup>ST</sup> APPELLANT**

**CHARLES MAINA MURIUKI ..... 2<sup>ND</sup> APPELLANT**

**GEORGE NYORO WAIGI ..... 3<sup>RD</sup> APPELLANT**

**AND**

**LONDON DISTILLERS (K) LTD ..... 1<sup>ST</sup> RESPONDENT**

**KATRINA MANAGEMENT CONSULTANTS ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the ruling/order of the National Environment Tribunal at Nairobi dated 07/09/2020 in NET Case No. 26 of 2020 between London Distillers (K) Limited - versus- National Environment Management Authority & others)*

**RULING**

1. This is a ruling in respect of a notice of motion dated 16/08/2023 filed by the 1<sup>st</sup> respondent, expressed to have been moved within the provisions of Sections 1A, 1B & 3A of the *Civil Procedure Act*, Orders 42 Rules 13 (1) & 35 of the Civil Procedure Rules, and all other enabling laws, and it seeks the following reliefs from this court: -
  - a. This honourable court be pleased to strike out this appeal for want of prosecution.
  - b. The appellants bear the costs of this motion and the appeal in any event.
2. The motion is premised on the grounds listed on the face thereof and Pushpinder Singh Mann's supporting affidavit, sworn on the instant date. In summary of both, it is contended: -



- a) the appellants instituted the appeal on 15/09/2020 which is close to 3 years ago yet have failed to serve the 1<sup>st</sup> respondent with the memorandum of appeal,
  - b) a perusal of the court record reveals this matter is live and has been before the deputy registrar on diverse dates of 11/08/2022, 16/10/2022, 22/02/2023, 24/05/2023 and is now scheduled again to be in court on 13/09/2023 which dates have never been served; and
3. The memorandum of appeal is patently and incurably incompetent as the National Environment Management Authority (“NEMA”) which was the 1<sup>st</sup> respondent before the tribunal, has been omitted as a party, d) the instant firm of advocates is conflicted having at all material times acted for the appellants and 2<sup>nd</sup> respondent before the tribunal and cannot now again purport to act against it having benefitted from their services in those proceedings, e) this appeal has been lodged with palpable mischief as the names of parties to be served and or their advocates have been omitted from the memorandum of appeal; and
  4. The 1<sup>st</sup> respondent’s advocates have never been served with a copy of any letter requesting the tribunal for typed proceedings to show any seriousness in prosecuting the appeal, and finally, g) the appellants have to date failed to comply with the provisions of Order 42 Rule 13, of the Civil Procedure Rules (“CPR”).
  5. The motion is unopposed and, as directed by the court, the 1<sup>st</sup> respondent’s arguments were adequately canvassed by the written submissions that were received from the law firm of Ms. Tiego & Co. Advocates dated 9/07/2024. In consequence, counsel’s arguments and provisions of the law and judicial precedents relied upon in presenting the submissions shall be considered by this court. Thus, having given careful thought to the motion, its grounds, affidavit and arguments contained in the submissions, the main issue for determination is whether the appeal warrants being struck out.
  6. Regarding this issue, from the record, it is evident that a memorandum of appeal was filed on 15/09/2020 against the tribunal’s decision that was rendered on 7/09/2020, which was timeous. Further, it is clear that there is no return of service showing the respondents were ever served with a memorandum of appeal, and despite several mention notices being issued to the appellants by the court for purposes of directions and admission of the appeal as envisaged under Order 42 of the Civil Procedure Rules, the appellants have failed to attend court.
  7. It is noteworthy that although the 1<sup>st</sup> respondent’s counsel has invited this court to determine if the appellant’s counsel also appeared for the 2<sup>nd</sup> respondent or one party before the tribunal has been left out in these proceedings, this court declines such a request as it is unable to verify such information in the absence of the pleadings that were before the tribunal.
  8. As regards the prevailing jurisprudence on the issue at hand, courts have consistently held that an appeal cannot be dismissed before directions have been issued as envisaged by Order 42 of the Civil Procedure Rules.

In *Pinpoint Solutions Limited & another v Lucy Waithegeni Wanderi (as the Legal Administrator of the Estate of James Nyanga Muchangi)* [2020] KEHC 10233 (KLR), the court, in making reference to Order 42 Rules 11, 12, 13 and 35 of the Civil Procedure Rules, stated:-

- “ 20. The provisions of the law relating to dismissal cannot be read in isolation. The bottom line is that directions must have been given before an appeal can be dismissed for want of prosecution. Indeed, there does not appear to be any penalty where an appellant fails to proceed as per Order 42 Rule 11 and Order 42 Rule 13 of the Civil Procedure Rules, 2010.



21. This court took the view that an appeal cannot be dismissed before directions had been given. As there was no indication that directions had been given herein, the Appeal herein could not be dismissed under Order 42 Rule 35 (1) of the Civil Procedure Rules.”

In *Njoroge & another v Monyo* [2024] KEHC 3164 (KLR), the court stated: -

“Further, as discussed above, it would appear that an appeal cannot be dismissed for want of prosecution before directions are taken. However, a party is not allowed to file an appeal and then go to sleep.”

Lastly, in *Kirinyaga General Machinery V Hezekiel Muriithi Ileri* [2007] Kehc 2348 (Klr), which was rendered pre-2010 Constitution held:-

“It is clearly seen from that rule before the Respondent can move the court either to set the appeal down for hearing or to apply for dismissal for want of prosecution directions ought to have been given as provided in Rule 8B. Directions have never been given in this matter. Directions having not been given the orders sought by the Respondent cannot be entertained.”

9. Accordingly, the question that arises herein is what happens in a situation where appellants have totally lost interest in the appeal and are reluctant to attend court for directions or even serve the memorandum of appeal? Is a respondent left helpless with anxiety over an appeal being dangled over its head with no end in sight? In this court’s humble view, the answers lie with the overarching principles of the court as found in Articles 159(2) (b) of our Constitution, Sections Section 1A and 1B (d) of the *Civil Procedure Act* and Section 3 (1) of the *Environment and Land Court Act*, which call it to carry out the business of the court efficiently, without delay and promptly.
10. It follows that, having filed the appeal, the appellants were bound to be proactive in complying with the provisions of the law and attend court for purposes of directions; having failed to do so, they were in breach of the law. It is clear to this court’s mind that they have completely lost interest in the appeal. Public policy demands that the business of the courts should be conducted with expedition, and since they have decided to sleep on their right to appeal, neither the 1<sup>st</sup> respondent nor this court can force them to take steps to prosecute their appeal. In the circumstances and for the above-stated reasons, this court finds the motion 16/08/2023 merited and hereby strikes out the appeal with costs to the 1<sup>st</sup> respondent. The file is hereby effectively marked as closed.

It is so ordered.

**DELIVERED AND DATED AT MACHAKOS THIS 7<sup>TH</sup> DAY OF OCTOBER, 2025.**

**HON. A. Y. KOROSS**

**JUDGE**

**7.10.2025**

**Ruling delivered virtually through Microsoft Teams Video Conferencing Platform**

In the presence of;

Ms Kanja Court Assistant.

Mr. Tiego for the 1<sup>st</sup> respondent/applicant.



N/A for appellant.

N/A for 2<sup>nd</sup> respondent.

