

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**

**ELCLA NO. E035 OF 2024**

VINCENT ORAYO ..... APPELLANT/RESPONDENT

**VERSUS**

AZENATH ALUOCH .....1<sup>ST</sup> RESPONDENT/APPLICANT

NANCY AKINYI .....2<sup>ND</sup> RESPONDENT/APPLICANT

COLLINS OKECH ONJOGA ..... 3<sup>RD</sup> RESPONDENT/APPLICANT

(Suing as joint administrators of the Estate of Onjong’a Ongodo-deceased)

***(Being an appeal from the judgement and decree of the Hon. Amos Kiprop Makoross given at Tamu on the 11<sup>th</sup> day of June 2024 in Tamu ELC No. E004 of 2022)***

BETWEEN

AZENATH ALUOCH .....1<sup>ST</sup> PLAINTIFF

NANCY AKINYI .....2<sup>ND</sup> PLAINTIFF

COLLINS OKECH ONJOGA ..... 3<sup>RD</sup> PLAINTIFF

VERSUS

VINCENT ORAYO .....DEFENDANT

**R U L I N G**

The Notice of Motion application dated 10<sup>th</sup> May, 2025 seeks for orders that the appeal herein be dismissed for want of prosecution, the orders of 3<sup>rd</sup> October, 2024 in TAMU MCELC NO. E004 OF 2022 be set aside and the costs of the application be provided for.

The grounds upon which the application was brought are that on 3<sup>rd</sup> September, 2024 an order of stay of execution of the judgement of the trial court was granted by consent before the trial court.

That there has been inaction on the part of the Appellant as he (Appellant) lost his zeal for the appeal once he secured the stay orders before the trial court. That the Appellant continues to earn mesne profits from the suit land to the detriment of the Applicant. That at the same time, the Appellant is destroying property of monumental value to the Applicant and the estate of the deceased.

That the Appellant failed to provide proof that he had paid for proceedings pursuant to a court order dated 13<sup>th</sup> March, 2025 by the Deputy Registrar.

That the actions of the Appellant amount to abuse of the court process and should be stopped.

The application was supported by the contents of the Supporting Affidavit sworn by the Applicant on 20<sup>th</sup> May, 2025 and the annexures thereto.

The application was not opposed. Affidavit of Service filed shows that the appellant was served with the application. No response was filed.

Vide directions taken on 24<sup>th</sup> June, 2025, the application was heard by way of written submissions.

Written submissions dated 26<sup>th</sup> June, 2025 were filed on behalf of the Applicant by the firm of Oyugi Ochieng & Associates Advocates.

Counsel submitted that article 50 of the Constitution of Kenya provides for the right to have any dispute that can be resolved by the application of the law decided in a fair and public hearing and to have the trial begin and concluded without unreasonable delay.

Counsel also relied on the provisions of Order 42 Rule 35(1) and (2) of the Civil Procedure Rules 2010 and the case of Kenya Power and Lighting Company -vs- Andy International 2020 and submitted that in the present case Order 42 Rule 35(1) and (2) of Civil Procedure Rules have been complied with by the Appellant with by the Appellant (Respondent in the application).

That no positive significant step has been taken by the Appellant since filing of the Memorandum of Appeal. Counsel relied on the cases of Birkett -vs- James [1978] IAC 297, Hogan -vs- Jones [1994] 1 ILRM 512, Stephen -vs- Paul Flynn Limited [2005] IEHC 148 and Eastern Produce Kenya Limited -vs- Rongai Workshop & Transporters Ltd & Another [2014] on dismissal of appeals for want of prosecution.

Counsel submitted that prejudice is likely to be occasioned on the Applicant. That the bundle of documents presented to court demonstrate the same. That the Appellant secured stay orders before the trial court and continued to enjoy mesne profits accruing from the suit land at the detriment of the Applicant.

Counsel urged the court to allow the application.

No submissions were filed by the Appellant. Affidavit of service sworn by Elisha Gweth shows that the Appellant was served with the respondent's written submissions. The Appellant filed no submissions.

The court record shows that the appeal herein was filed on 21<sup>st</sup> June, 2024 vide the Memorandum of Appeal of even date.

That on 13<sup>th</sup> March, 2025 when the matter came up for mention before the Deputy Registrar, Counsel for the Appellant had not

received proceedings and judgement. Counsel prayed for time so as to file Record of Appeal. On the same date the court directed Counsel to deliver to court the receipt for payment of court fees for the proceedings to enable the court to speed up typing of proceedings.

Henceforth, the court record shows that the Appellant did not attend court - either personally or through Counsel for the subsequent court appearances. There is also no evidence that the Appellant provided the court with the payment receipt as directed. The Appellant has the burden to move the process for expeditious disposal of the appeal by paying for the proceedings and following up on typing of the same and preparation of the record of appeal. There is no evidence that the appellant has taken any of these steps.

The appeal therefore qualifies for dismissal for want of prosecution.

However, for the interest of justice the court hereby directs the Appellant to file and serve record of appeal within 30 days of the date of service of this ruling upon the Appellant, failing which the appeal shall stand dismissed for want of prosecution with costs to the Respondents (Applicants herein).

Costs of the present application are awarded to the Applicants herein (Respondents in the appeal).

Orders accordingly.

**Ruling dated and signed at Kisumu, read virtually this 16<sup>th</sup> day of October, 2025 through Microsoft Teams Online Application.**

**E. ASATI,  
JUDGE.**

**In the presence of:**

Maureen: Court Assistant.

No appearance for the appellant/ Respondent.

Gweth for the Respondents/Applicants.