



**Gilbert & 3 others v M'Atugi (Environment and Land Appeal
E041 of 2022) [2025] KEELC 7161 (KLR) (21 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7161 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E041 OF 2022
BM EBOSO, J
OCTOBER 21, 2025**

BETWEEN

**LYDIAH KARIMI GILBERT 1ST APPELLANT
JAMLICK MUTHURI 2ND APPELLANT
ROSALIND KARIMI M'AMARA 3RD APPELLANT
GILBERT MURIUKI RUKARIA 4TH APPELLANT**

AND

FELIX MWEBIA M'ATUGI RESPONDENT

RULING

1. Falling for determination in this ruling is the appellants' amended notice of motion dated 1/8/2025. The application was initially dated 1/7/2025. The limb of the application relating to the appellants' plea for leave to change advocates was granted on 22/7/2025.
2. Through the motion, the appellants seek an order reinstating this appeal. Secondly, they seek an order inhibiting dealings in the suit land, pending the hearing and determination of the appeal. Thirdly, they seek an order of injunction restraining dealings in the suit land pending the hearing and determination of the appeal.
3. The application was premised on the grounds outlined in the motion and in the supporting affidavit sworn on 1/8/2025 by Jamlick Muthuri. It was canvassed through oral submissions tendered in the virtual court on 13/10/2025.
4. The case of the appellants is that, dissatisfied with the judgment of the lower court dated 30/6/2022, they lodged this appeal on 2/8/2022 vide a memorandum of appeal dated 16/7/2022, inviting this court to set aside the said judgment. At that point, they were represented by M/s L. Kimathi Kiara & Co. Advocates. When they subsequently visited their advocates on an undisclosed date, they were



- advised that the appeal was awaiting admission. When they realized that their advocates were “taking them in circles”, they sought the services of M/s Munene Kinyua & Co Advocates who filed their notice of appointment on 11/10/2022. The appeal was ultimately dismissed on 5/12/2023 for non-attendance and for want of prosecution.
5. The appellants add that they became curious when the respondent attempted to evict them from the suit land and informed them that he “had already won the case” yet their advocates on record had informed them that the appeal was awaiting admission. [They have, however, not disclosed the date when the respondent tried to evict them]. The appellants add that they “became aware of the developments on the 9th day of May 2025” and decided to visit the court’s customer care desk where they were finally informed that the appeal had been dismissed for non-attendance and for want of prosecution. They contend that they confronted their advocates who “were dismissive of them and informed them that they had not met their part of bargain which was not the case”.
 6. In their oral submissions, they submitted that they learnt about the dismissal when they received a notice requiring them to vacate the suit land. They added that failure to prosecute the appeal was the mistake of their counsel. They urged the court to reinstate the appeal.
 7. The respondent opposed the application through his replying affidavit dated 18/7/2025 and brief oral submissions. The case of the respondent is that, the appeal was filed on 2/8/2022 and was admitted on 13/6/2023. On 13/6/2023, the appellants were ordered to file and serve the record of appeal within 60 days. The appellants did not comply. On 18/10/2023, they were granted a further 14 days within which to file the record of appeal but, once again, they did not comply. He adds that, come 5/12/2023, the appellants did not attend court. Left with no other option, the court dismissed the appeal.
 8. The respondent emphasizes that the appeal belonged to the appellants, adding that the appellants have not substantiated their allegation that it is their advocate who failed to act on their instructions, adding that as at 11/10/2022, M/s Munene Kirimi & Co Advocates were representing the appellants. He faults the appellants for not tendering any explanation as to why their present advocates did not take steps to prosecute the appeal.
 9. The respondent adds that the judgment of the lower court was executed and the land registrar relating to parcel number Abogeta/L. Kiungone/139 ceased to exist on 23/3/2023. He states that he has been in occupation and user of the suit land since the year 2003, adding that the allegation that there was an attempted eviction is a falsehood. Lastly, the respondent states that the court’s discretion cannot be exercised in favour of a party who does not respect court orders/directions. He urges the court to reject the application.
 10. The court has considered the application, the response to the application, and the parties’ respective oral submissions. The following are the two key issues that fall for determination in this ruling: (i) Whether the application meets the criteria for reinstating an appeal dismissed on the ground of want of prosecution; and (ii) Whether the application meets the criteria upon which a first appellate court exercises jurisdiction to grant an interlocutory injunction.
 11. The court’s jurisdiction to reinstate a dismissed appeal is a discretionary one. The guiding principle in a court’s exercise of discretionary jurisdiction was spelt out in *Mbogo & Another Vs Shah*(1968) EA 96. The court’s discretion serves to prevent injustice or hardship resulting from an accident, inadvertence or excusable mistake or error. The discretion is not intended to assist a litigant who deliberately seeks to obstruct or delay the cause of justice.



12. In *Tabuche v Tinga & 2 others* [2024] KECA 551 (KLR), the Court of Appeal summed up the relevant principle as follows:

“Reinstatement of a suit dismissed for want of prosecution is a discretionary remedy and not as of right. In any event, each case depends on its own circumstances.”
13. In the present application, the appellants/applicants have tendered a disjointed explanation. They allege that initially they instructed M/s L. Kimathi Kiara & Co. Advocates to lodge and prosecute this appeal. They add that when they realized that their said advocates “were taking them in circles”, they sought the services of M/s Munene Kinyua & Co Advocates who filed their notice of appointment on 11/10/2022. They have not exhibited the alleged notice of appointment or any notice of change of advocates that was filed by the said advocates on 11/10/2022. The court record does not bear any record of change of advocates. The only change is the one effected on 22/7/2025 pursuant to this court’s grant of prayer 2 of the amended notice of motion dated 1/8/2025.
14. According to the court record, M/s Munene Kinyua & Co Advocates, whom the appellants are blaming, were not on record at the time the appeal was dismissed. The law firm which was on record in this appeal at the time the appeal was dismissed on 5/12/2023 was M/s L. Kimathi Kiara & Co Advocates. If the appellants withdrew instructions from M/s L. Kimathi Kiara & Co Advocates, it was their obligation to ensure that their newly appointed advocates filed and served an appropriate notice. It was their responsibility to ensure that they were seized of proper evidence of change of advocates by their alleged new advocates. It was also their duty to present the notice of change of advocates as evidence in support of their application. They abdicated that responsibility. They have presented a narrative that is at variance with the court record.
15. Secondly, the appellants have withheld critical information relating to important dates and particulars such as: (i) the date/time when they became curious that the appeal had stayed for a lengthy duration without them being updated; (ii) the date when they allegedly made a follow-up in the court registry; (iii) the date when it dawned on them that M/s L. Kimathi Kiara & Co Advocates were taking them in circles; (iv) the date when M/s Munene Kinyua & Co Advocates informed them that the appeal was yet to be admitted; (v) the date and evidence relating to payment of legal fees to M/s Munene Kinyua & Co Advocates; (vi) the date when the respondent allegedly went to evict them and they became curious, and (vii) the date when they confronted M/s Munene Kinyua & Co Advocates. A party inviting the court to exercise discretionary jurisdiction of this nature has an obligation to make full disclosure to the court. The appellants have elected to withhold the above material information but expect the court to exercise discretion in their favour.
16. Thirdly, in paragraph (n) of the supporting affidavit, the appellants contended that they became “aware of the developments on the 9th day of May 2025”. The present application was filed on 1/7/2025, implying that even after they learnt about the dismissal of the appeal, the appellants stayed for 52 days before bringing the present application. They have not bothered to explain the delay of 52 days.
17. On whether the appellants have an arguable appeal, the court notes from part of the trial court record that the appellants approached the trial court seeking leave to file a defence and be heard on their defence after the case had been heard ex-parte and was pending judgment. Vide a ruling dated 17/6/2021, the trial court “arrested” the judgment and gave the appellants the opportunity to file and serve their defence within 30 days so that they could be heard in the case. The appellants did not bother to file and serve a defence. Consequently, the trial court invoked the default clause in its ruling and proceeded to render a judgment in the suit. The appellants did not bother to approach the trial court



for an order enlarging the time for compliance or an order setting aside the ex-parte judgment. They elected to bring this appeal on 2/8/2022.

18. That is not all. The impugned judgment was rendered on 30/6/2022. This appeal was filed on 2/8/2022. Under Section 16A of the *Environment and Land Court Act* and Section 79 of the *Civil Procedure Act*, the limitation period for lodging an appeal in this court is 30 days. The 30 days limitation period lapsed on 30/7/2022. The appellants have not exhibited any court order enlarging the limitation period. Put differently, they have not demonstrated that they had a competent appeal prior to the dismissal order of 5/12/2023. In the absence of an order enlarging time, the dismissed appeal was fatally incompetent.
19. The case of the respondent in the trial court was that the appellants were administrators of the estate of the late Joyce Muthoni Rukaria [the deceased]. On 28/6/2011, he purchased from the deceased 0.5 acres out of land parcel number Abogeta/L. Kiungone/139. Unfortunately, the deceased died before finalizing the transfer of the 0.5 acre portion. Whereas the estate was holding the 0.5 acre in trust for the respondent, the appellants were unwilling to finalize the transfer. The appellants elected not to respond to the above allegations through a defence.
20. Given the above circumstances and taking into account the fact that the appellants failed to file a defence within 30 days despite being accorded the opportunity to do so and never bothered to apply for enlargement of the above period, there are doubts that the appellants have an arguable appeal.
21. For the above reasons, this court comes to the conclusion that the application under consideration does not meet the criteria upon which this court exercises the discretionary jurisdiction to reinstate an appeal dismissed on the ground of want of prosecution.
22. The plea for an order reinstating this appeal having failed, this court has no jurisdiction to grant interlocutory orders pending the hearing and disposal of a non-existent appeal.
23. On costs, the general principle in Section 27 of the *Civil Procedure Act* is that costs follow the event. No proper grounds have been demonstrated to warrant a departure from the general principle.
24. In the end, the notice of motion dated 1/7/2025 and amended on 1/8/2025 is rejected and dismissed for lack of merit. The appellants/applicants shall bear costs of the application.

DATED, SIGNED AND DELIVERED AT MERU THIS 21ST DAY OF OCTOBER, 2025

B M EBOSO [MR]

JUDGE

