



**Inganji & another v Museve (Environment and Land Appeal  
E032 of 2023) [2025] KEELC 7291 (KLR) (16 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7291 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT AND LAND APPEAL E032 OF 2023  
A NYUKURI, J  
OCTOBER 16, 2025**

**BETWEEN**

**FLORENCE IKHUNGU INGANJI ..... 1<sup>ST</sup> APPELLANT**

**ELKANA INGANJI MACHIKA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**FRANCIS NDUNDE MUSEVE ..... RESPONDENT**

**RULING**

**Introduction**

1. Vide an application dated 28<sup>th</sup> February 2025, the appellants sought the following orders;
  - a. Spent
  - b. Spent
  - c. That the orders of this court made on 26/02/2025 confirming the dismissal of this appeal be set aside and appeal be reinstated. That the period for filing and serving the record of appeal herein be extended.
  - d. That costs be in the cause.
2. The application is predicated on the supporting affidavit sworn by the 1<sup>st</sup> appellant on 28<sup>th</sup> February 2025. The applicants' case is that immediately after the appeal was dismissed, the appellants' counsel passed away. That they tried retrieving the file from the advocates office in vain as there was no one responsible in the office. The 1<sup>st</sup> appellant stated that their counsel had been hired by a well-wisher and she did not have a direct contact with him. That when she visited his office, she could not get any assistance and that at the time she got a new counsel, time to comply had lapsed. She averred that failure to file Record of appeal in time was not deliberate hence, excusable. That the respondent shall not be



unduly prejudiced and that if not given a chance to prosecute the appeal, she will suffer irreparable loss as she may be evicted from the suit property any time. She cited the cases of *West Mont Holding v Central Bank of Kenya & 2 Others* petition No. 16 of 2021 and *Philip Chemwelo & Another v Augustine Kubende* (1982) KAR 103 and argued that she was entitled to be heard on merit and that her mistake is excusable. She averred that she was ready to expeditiously prosecute her appeal.

3. The application was opposed. The respondent filed a replying affidavit dated 2<sup>nd</sup> April 2025. He stated that the application was fatally defective, vexatious, misconceived, lacks merit and amounted to an abuse of the court process. That before the appeal was dismissed for want of prosecution on 26<sup>th</sup> February 2025, the appellant had been given numerous opportunities to prosecute the appeal but failed to do so. That in June 2024, the appellant was given time to file Record of appeal but informed court that her advocate Mr. Onindo had died. That the court indulged her and gave her 60 days to get another advocate but she failed to do so.
4. That the application was an afterthought and brought in bad faith. That on 11<sup>th</sup> June 2024, the appellant was given more time to comply when she said her advocate was dead. That on 22<sup>nd</sup> October 2024, she sought more time and was given 60 days to file Record of appeal and submissions and in default the appeal was to stand dismissed. That the appellant failed to obey court orders and hence her appeal was dismissed on 22<sup>nd</sup> January 2025. That this appeal was filed on 26<sup>th</sup> June 2023 but she failed to file the Record of appeal on time. That the appellant has shown laxity and indifference leading to delay of this matter. That no good reason has been given to explain the delay.
5. Parties filed written submissions in support of their respective positions. On record are submissions filed by the applicants dated 18<sup>th</sup> April 2025 and those filed by the respondent dated 2<sup>nd</sup> April 2025; both of which this court has duly considered.

### **Analysis and determination**

6. The court has carefully considered the application, response thereto and parties' written submissions. The issue that arises for the court's determination is whether there is a good and sufficient reason to set aside the orders dismissing the appeal herein made on 26<sup>th</sup> February 2025 and extending time to file Record of appeal.
7. Section 95 of the *Civil Procedure Act* grants the court the jurisdiction to enlarge time for doing any act under the Act. The same provides as follows;

“Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have been expired.”
8. In the case of *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others* [2014] e KLR, the Supreme Court set out matters to take into account in considering an application for extension of time, as follows;
  - a. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;
  - b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
  - c. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;



- d. Whether there is a reasonable reason for the delay, the delay should be explained to the satisfaction of the court;
  - e. Whether there will be any prejudice suffered by the Respondents if the extension is granted
  - f. Whether the application has been brought without undue delay; and
  - g. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.
9. Therefore, the discretion to extend time ought to be exercised judiciously and not whimsically. Extension of time may be granted where the applicant explains to the court's satisfaction, the reason for the delay. The court will also consider the period of the delay in determining whether or not to grant extension of time.
10. In the instant matter, the applicants' explanation for delay is that at the time of dismissal of the appeal for want of prosecution, the firm of Onindo & Onindo advocates was on record for them. That Mr. Onindo passed away "during the period immediately after the orders of the court were made". That they tried to retrieve their file from that office in vain as there was no one responsible for the file. That they did not get assistance when they visited the advocates office. That they got a new advocate when the period given had expired.
11. I have considered the record. The appellants filed this appeal on 23<sup>rd</sup> July 2023. The lower court proceedings were certified on 22<sup>nd</sup> January 2024 and the trial court file forwarded to this court on 8<sup>th</sup> February 2024. This matter came up on 21<sup>st</sup> September 2023, when the 1<sup>st</sup> appellant sought adjournment on account of her advocates illness. A similar application was made on 27<sup>th</sup> November 2023, when the appellants application dated 23<sup>rd</sup> June 2023 was dismissed for non-service. On the same date, the court ordered the appellants to file and serve Record of appeal and submissions in 45 days. On 14<sup>th</sup> March 2024, when the matter came up, again the appellant had not complied. Counsel for the appellant sought 30 days to comply. On 11<sup>th</sup> June 2024, the appellant had not complied. On that date, the 1<sup>st</sup> appellant told court that her advocate had passed away. She sought time to instruct a new advocate. The court granted her 60 days to comply.
12. On 22<sup>nd</sup> October 2024, the 1<sup>st</sup> appellant who was present in court in person told court that she was still looking to instruct a new advocate. Again, on the said date, the court gave her more time of 60 days to file and serve Record of appeal and submissions, but ordered that in default, the appeal shall stand dismissed. No compliance was done and on 26<sup>th</sup> February 2025, counsel for the applicant sought more time to comply. No reasons were given for the delay. Therefore, the appeal was dismissed for want of prosecution.
13. In view of the above history of this matter, it is clear that as of 11<sup>th</sup> June 2024, the appellants were aware that their advocate was deceased. The court gave them time to get a new advocate and comply by filing Record of appeal and submissions, but on three different consecutive occasions, they failed to comply, without any justifiable cause. The record is clear that from the time of filing this appeal, the appellants have never complied with a single court order.
14. Therefore, the allegation by the appellants that their advocate died immediately the impugned orders were made, is not the correct position. No explanation has been given why between 11<sup>th</sup> June 2024 and 26<sup>th</sup> February 2025, which is a period of eight months, the appellants did not file Record of appeal and submissions.



15. It is clear to this court that the appellants have all along not had any intention of prosecuting this appeal, as previous time extensions herein have not jolted them to action. In the premises, I find no merit in the application dated 28<sup>th</sup> February 2025, which I hereby dismiss with costs to the respondent.

16. It is so ordered.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA OPEN COURT/VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 16<sup>TH</sup> DAY OF OCTOBER, 2025**

**A. NYUKURI**

**JUDGE**

In the presence of;

Ms. Chesire for the respondent

Ms. Florence Ikhungu Inganji the 1<sup>st</sup> appellant in person

Court Assistant: Delphine

