



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Great Rift Valley Services Ltd v Nga'ng'a (Civil Appeal 232 of 2023)
[2025] KEHC 15002 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15002 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL 232 OF 2023
RN NYAKUNDI, J
OCTOBER 23, 2025**

BETWEEN

GREAT RIFT VALLEY SERVICES LTD APPELLANT

AND

RAPHAEL KIMANI NGA'NG'A RESPONDENT

RULING

1. Before this Court is a notice of motion under Certificate of Urgency dated 14th day of August 2025 where the Applicant sought for the following orders:
 - a. Spent
 - b. That this honorable court do stay execution arising from Eldoret Small Claims E762 of 2022 which is the subject of this appeal.
 - c. That this court do set aside its Ruling and order dated 26th June 2025 dismissing this suit under Order 17 Rule 2 of the Civil Procure rules on account that the same has been pending without action for 1 year the same having been entered in error or by mistake.
 - d. That this court do reinstate the appeal, admit the record of appeal dated 4th December 2024 which has been duly served and issue directions as to the disposal of the Appeal.
 - e. That this court to reinstate the terms of stay of execution as ordered by Hon. Justice Nyakundi on 20th December 2023; and
 - f. That the Court do make any order it deems just and expedient.
2. Which application is based on the following grounds:



- a. On 26th June 2025 the Court ex-parte dismissed the instant appeal under Order 17 Rule 2 of the Civil Procedure Rules on grounds that the matter was pending without action for over one year.
 - b. This was an error/mistake on the face of the record as the matter has been active in court with the last action being on 8th May 2025 when the Appellant's Advocate by the name Martha Magogo appeared before the Deputy Registrar seeking to have the Record of appeal admitted and ready for hearing as the record of appeal had been filed and served on 4th December 2024. The file was missing in Court on 8th May 2025 and the Deputy Registrar advised that the Advocate do seek a mention date at the Court Registry.
 - c. As late as 20th June 2025 the Appellants Advocate wrote to Court a letter which they updated on the e-filing portal seeking a mention date for the appeal.
 - d. The matter has always been active and is ready for hearing of the main appeal since the record of appeal was filed and served in December 2024
 - e. The Appellant had also obtained a conditional stay on 20th December 2023 subject to furnishing a security for costs in the form of a bank guarantee of the Decretal Sum of Kshs 920,000/= arising from the Small Claim E762 of 2023.
 - f. The Appellant was only made aware of the dismissal of this appeal on 13th August 2025 when they were served with a proclamation notice from Eshikhoni Auctioneers.
 - g. Unless the Court intervenes, reinstates the appeal and stays the proclamation then the Appellant stares at the risk of execution when they have a live appeal which was dismissed in error or by mistake; and
 - h. It is in the interest of fairness and justice that the orders sought to be granted.
3. The application is opposed by the Respondent vide a replying affidavit who avers as follows:
- a. That the Applicant herein filed an application dated 14th August 2025 seeking for stay of execution arising from Eldoret Small Claims E762 of 2022 which is the subject of this appeal.
 - b. That having read and understood the said application by Applicant, I wish to respond as here under:
 - c. That this appeal was dismissed on 26/6/2025 because the appeal has been pending without any action.
 - d. That I am a successful litigant and I am entitled to enjoy the fruits of the judgment which was delivered in my favour on 17/11/2023.
 - e. That the Appellant exercise his right of appeal through a memorandum of appeal dated 19/11/2023 and appealed against the Decree and Judgment of Hon. T. W. Mbugua.
 - f. That upon filing the memorandum of appeal and record of appeal, the Applicant/appellant has never taken any steps to see that the appeal is set down for hearing.
 - g. That the Appellant has never fixed the matter for hearing of directions from 3/1/2024 to 8/5/2025 a clear indication that the appellant has lost interest in the matter.
 - h. That since the applicant filed this appeal he left it dormant without taking any essential steps to prosecute the appeal for over one year.



- i. That this application has been presented with the intention of delaying the matter and whose end result is prejudicing and denying me in realizing the fruits of my judgment and when the appeal was dismissed I instructed my advocates on record to proceed and execute the judgment.
- j. That this application is a delaying tactic employed by the applicant to ensure that I do not get my entitlement as a successful litigant.
- k. That it is not sufficient for the Applicant to merely stay mute for over one year without taking any steps to see that the appeal is heard and determined only to be awakened by service execution papers by the auctioneers.
- l. That the Applicant has not been diligent litigant at all and the filing of this application is merely a delaying tactic meant to keep alive a defense and stay of execution which was already determined.
- m. That this matter had already been heard and determined and therefore this court is on its order of dismissing the appeal.
- n. That the application frivolous, vexatious and is brought in bad faith solely to obstruct and delay execution of the judgment.
- o. That the continued pendency of this matter in court unfairly denies me the fruits of my judgment.
- p. That the applicant is attempting to use the wrong procedure of filing multiple applications in this court as a way of blocking justice.
- q. That litigation should always come to an end and once judgment has been delivered, litigation should come to an end.
- r. That this application therefore is frivolous, vexatious, incompetent and an abuse of the court process, intended only to delay execution and deny me as the decree holder the fruits of the judgment.
- s. That the application dated 14.8.2025 therefore lacks basis and should be dismissed with costs.
- t. That granting the orders sought would unfairly prejudice me as a successful party that it entitled to enjoy the fruits of my judgment.
- u. That the applicant's application is completely misguided and lacks merit.
- v. That the application should therefore be dismissed with costs.

Analysis and determination

4. I have considered the application, the grounds in support thereof and the replying affidavit in opposition. The central issues for determination are: first, whether the dismissal of the appeal on 26th June 2025 for want of prosecution was proper in the circumstances; second, whether the appeal should be reinstated; and third, whether a stay of execution pending the hearing and determination of the appeal should be granted. The Applicant contends that the dismissal was entered in error as the appeal has been actively prosecuted, with the last step being on 8th May 2025 when counsel appeared before the Deputy Registrar seeking admission of the record of appeal filed on 4th December 2024. The Respondent opposes the application, arguing that the Appellant has been dormant for over one year without taking essential steps to prosecute the appeal, and that this application is merely a dilatory



tactic to frustrate execution of a decree lawfully obtained. Having examined the court record and the submissions of both parties, I find merit in the Applicant's case for the reasons set out hereunder.

5. To start with on reinstatement, the law on reinstatement of suits dismissed is Order 12 Rule 7 of the Civil Procedure Rules, where the court may set aside the dismissal order, on such terms as may be just. The power to reinstate is discretionary.
6. The power to dismiss suits for want of prosecution is rooted in the need to ensure expeditious administration of justice. Courts have consistently emphasized that undue delay in prosecuting matters not only offends the cardinal principle that justice delayed is justice denied, but also creates systemic challenges within the judicial system. When litigants file suits and thereafter abandon them without taking meaningful steps toward their conclusion, such matters remain suspended over opposing parties indefinitely, creating uncertainty and prejudice. Such dormant cases contribute significantly to court backlogs and erode public confidence in the administration of justice. The remedy of dismissal for want of prosecution therefore serves the dual purpose of protecting the interests of diligent litigants and ensuring efficient utilization of scarce judicial resources.
7. In determining whether to reinstate a suit or appeal that has been dismissed for want of prosecution, courts must consider several factors. These were articulated in *Ivita v Kyumbu* [1984] KLR 441 (Chesoni, J), where it was held that the court should examine: whether the delay complained of is inordinate and inexcusable; whether the interests of justice can still be served notwithstanding the delay; the need to balance fairness to both parties, as justice must be administered evenhandedly; whether the respondent would suffer prejudice if the matter is reinstated; and the adequacy and reasonableness of the explanation proffered for the delay. These considerations remain apposite in guiding the court's exercise of discretion in such applications.
8. The discretion to reinstate a dismissed suit or appeal must be exercised judiciously, guided by the constitutional imperatives contained in Articles 50 and 159 of *the Constitution*, as well as the overriding objective enshrined in sections 1, 1A and 3A of the *Civil Procedure Act*, Cap 21, Laws of Kenya. In *John Nahashon Mwangi v Kenya Finance Bank Limited (in Liquidation)* [2015] eKLR [2015] KEHC 6789 (KLR) (Gikonyo, J), the court emphasized that Article 159 of *the Constitution* mandates courts to administer justice without undue regard to procedural technicalities, while Article 50 guarantees the right to a fair hearing. These constitutional principles must inform the court's approach when considering reinstatement applications, bearing in mind that dismissal for want of prosecution is a drastic remedy that should not be applied mechanically. The overriding consideration is whether substantive justice can be achieved by reinstating the matter while ensuring fairness to all parties.
9. The critical question is whether the period from 30th January 2024 to 8th May 2025, during which no court appearance was made, constituted such inordinate and inexcusable delay as to warrant dismissal of the appeal. In my considered view, it did. The court dismissed the suit with the impression that nothing had been done towards prosecuting the matter since 4th December, 2023. According to the Appellant, it had taken the essential step of preparing and filing the record of appeal by December 2024, which is the foundational requirement for prosecuting an appeal. That there were subsequent appearances in May and June 2025 demonstrating continued interest in pursuing the matter. While I do not condone delays in prosecuting appeals, I am mindful that the delay in this instance does not appear to have been willful or contumacious. The explanation that the court file was missing on 8th May 2025, though unfortunate, is not entirely implausible given the challenges that occasionally befall court registries. Moreover, the Appellant was not aware of the dismissal until served with execution papers on 13th August 2025, which suggests that the dismissal was made without notice to the parties.



10. I am further persuaded that the interests of justice favour reinstatement of this appeal. The Appellant has raised grounds of appeal against the decision of the Small Claims Court, and these grounds deserve to be ventilated and determined on their merits. To allow the dismissal to stand would be to deny the Appellant the constitutional right to be heard, enshrined in Article 50 of *the Constitution*, on the basis of procedural infractions that are not egregious. The balance of justice in this case tilts in favour of having the appeal heard and determined on the merits rather than allowing it to be stifled on procedural grounds.
11. I am alive to the Respondent's contention that he is a successful litigant entitled to enjoy the fruits of his judgment, and that the Appellant's conduct amounts to a dilatory tactic designed to frustrate execution. While I acknowledge the importance of ensuring that successful litigants are not indefinitely deprived of their entitlements, this consideration must be balanced against the Appellant's right to appeal. The right of appeal is a substantive right that should not be lightly foreclosed. In any event, the Respondent's interests can be adequately protected by the existing security arrangement. The record shows that on 20th December 2023, this court granted a conditional stay of execution subject to the Appellant furnishing security in the form of a bank guarantee for the decretal sum of Kshs. 920,000/-. There is no indication that this security has not been provided or that it has become inadequate. This arrangement ensures that the Respondent's judgment debt remains secure pending the determination of the appeal.
12. On the question of stay of execution, the principles governing grant of stay pending appeal are well settled. The applicant must demonstrate: that there exists an arguable appeal with a likelihood of success; that if the stay is not granted, the appeal will be rendered nugatory; and that the balance of convenience favours the grant of stay. In *Butt v Rent Restriction Tribunal & Another* [1982] KLR 417, the Court of Appeal emphasized that the primary consideration is whether the appeal would be rendered nugatory if execution proceeds pending its determination. In the present case, the appeal concerns a money decree of Kshs. 920,000/-. If execution is allowed to proceed and the Appellant's assets are sold, the appeal would indeed be rendered nugatory should the Appellant succeed on appeal. The Appellant would be left with a paper victory, having lost its property in the interim. This is precisely the mischief that stay orders are designed to prevent.
13. Moreover, as already noted, a conditional stay was granted by this court on 20th December 2023 upon the Appellant providing security for the decretal sum. The grant of that stay demonstrated a prima facie finding that the appeal raised arguable grounds. The dismissal of the appeal for want of prosecution did not extinguish the merits of the underlying appeal, which remain intact and unresolved. Reinstatement of the appeal logically necessitates reinstatement of the protective measures that were in place to preserve the subject matter of the appeal. To hold otherwise would be to permit execution against property that may ultimately be found to have been wrongly subjected to the decree in the first instance. The Respondent's interests remain adequately safeguarded by the security arrangement already in place.
14. . In the final analysis, I am satisfied that this is a proper case for exercising the court's discretion to set aside the dismissal order and reinstate the appeal. The Appellant has demonstrated continuing interest in prosecuting the appeal by filing the record of appeal and making subsequent court appearances. The interests of justice and the constitutional imperatives of fair hearing and substantive justice favour giving the Appellant an opportunity to have the appeal determined on its merits. The stay of execution should similarly be reinstated to preserve the status quo and prevent the appeal from being rendered nugatory, with the existing security arrangement remaining in force to protect the Respondent's interests.



15. In the premises, I make the following orders:

- a. The Ruling and Order of this court dated 26th June 2025 dismissing this appeal for want of prosecution is hereby set aside.
- b. The appeal is hereby reinstated and shall proceed to hearing on its merits.
- c. The Record of Appeal dated 4th December 2024 is hereby admitted.
- d. The stay of execution granted on 20th December 2023 is hereby reinstated on the same terms, namely that the Appellant maintain security in the form of a bank guarantee for the decretal sum of Kshs. 920,000/- pending the hearing and determination of this appeal.
- e. Execution proceedings arising from Eldoret Small Claims Court Case No. E762 of 2022 are hereby stayed pending the hearing and determination of this appeal.
- f. The appeal shall be mentioned on 17th November, 2025 for directions as to its expeditious disposal.
- g. Each party shall bear their own costs of this application, given the circumstances leading to the dismissal.

16. Orders accordingly.

DATED AND SIGNED AT ELDORET THIS 23RD DAY OF OCTOBER, 2025

.....

R. NYAKUNDI

JUDGE

