



REPUBLIC OF KENYA



**KENYA LAW**  
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**Rono v Oulula & 2 others (Civil Appeal 116 of 2022)  
[2025] KEHC 15772 (KLR) (3 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 15772 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CIVIL APPEAL 116 OF 2022  
RN NYAKUNDI, J  
NOVEMBER 3, 2025**

**BETWEEN**

**NANCY CHEPKOECH RONO ..... APPELLANT**

**AND**

**DR. SAMWEL OULULA ..... 1<sup>ST</sup> RESPONDENT**

**FASHION FOR YOU LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**KCB BANK KENYA LIMITED ..... PROFORMA RESPONDENT**

**RULING**

1. Before the Court is a Notice of Motion dated 14<sup>th</sup> July 2025 brought under Section 1A, 1B, 3A of the *Civil Procedure Act* CAP 21 Laws of Kenya, Order 42 Rule 13, Order 35(1) & (2) of the Civil Procedure Rules 2010, *the Constitution* & other enabling provisions of the law where the Applicant seeks for the following orders:
  - a. The Appellant's appeal be dismissed for want of prosecution.
  - b. Cost of the application be borne by the appellant.
2. Which application is based on the following grounds:
  - a. Since the filing of memorandum of appeal dated 27/10/2020, the Appellant has failed to set down its appeal for directions and/or hearing thereof.
  - b. Appellant has no interest in prosecuting her appeal.
  - c. It is in the interest of justice that the said orders are granted to obviate the Respondents from undue hardship occasioned by the appellant.



3. That the application is supported by the affidavit sworn by Stanley N. Kagunza who deponed as follows:
  - a. That I am an Advocate of the High Court of Kenya practicing as such in the firm and style of M/S Mukabane & Kagunza Advocates LLP who have the conduct of this matter on behalf of the Respondents/Applicants hence duly conversant with matters arising and therefore competent and duly authorized to swear this affidavit.
  - b. That the Appellant filed an application for stay of execution dated 24<sup>th</sup> August 2022 in Eldoret CMCC No. 1180 of 2018 together with a memorandum of appeal dated 12<sup>th</sup> August 2022.
  - c. That the said appellant's application for stay was dismissed on 10<sup>th</sup> February 2023 with costs.
  - d. That since the filing of memorandum of appeal dated 12<sup>th</sup> August 2022 the appellant has failed to set her appeal for directions and/or hearing thereof.
  - e. That Appellant has no interest in prosecuting her appeal without any justifiable cause.
  - f. That it is in the interest of justice that the instant application be allowed.
  - g. That there has been grave and deliberate inordinate delay in prosecuting the appeal hereto.
  - h. That I swear the affidavit in support of the instant application for dismissal of the appeal hereto.

### Decision

4. The dismissal of suits or appeals is governed by the [Civil Procedure Act](#) and the Applicable case law. In matters of the Civil Procure Act and rules specifically one has to make reference to powers donated to the court under Section 1(A) 1(B) 3 and 3(A) of the [Civil Procedure Act](#) as read with Order 17 Rule 1 and 2 and Order 42 Rule 35 (1) of the Civil Procedure Rules.
5. For a claim, suit, petition, or Appeal to be dismissed for want of prosecution there must be a showing of re-inordinate and in excusable delay by the Plaintiff, Applicant, Petitioner, etc leading a substantial risk of an unfair trial or causing serious prejudice to the Defendant/Respondent. The court therefore, considers the length for the delay, the reasons for it, the overriding objective of the [Civil Procedure Act](#) and rules, and the prejudice cost to the Defendant or Respondent.
6. The Rules which govern case management in our level of courts particularly the High Court is clearly premised in the [Civil Procedure Act](#). The statute orders actions to be dismissed for failure by the Plaintiff or Appellant to comply timelessly with some of the more important steps in the preparation of an action for trial or Appeal, such as delivering the statement of the claim, taking out summons for directions, and setting the Appeal or the suit down for trial in any event.
7. That is the very reason where a Judge of the High Court under the law has inherent jurisdiction of the court to dismiss an action for want of prosecution which no steps has been taken over a period of months or precisely 1 year. The court in *Alen v Mc Alpine* (1968) 1 ALL ER 543 (1968) 2 Q B 229.

Laid down the principles on which the jurisdiction has been exercised ever since. Those principles are set out, in my view accurately, in the note to RSC Ord. 25, r 1 of the current White Book Supreme Court Practice 1976, vol.1 pp 424-427. The power should be exercised only where the court is satisfied either (1) that the default has been intentional and contumelious, e.g. disobedience to a peremptory order of the court or conduct amounting to an abuse of the process of the court; or (2)(a) that there has been inordinate and inexcusable delay on the part of the plaintiff or his lawyers, and (b) that such delay will give



rise to a substantial risk that it is not possible to have a fair trial of the issues in the action or is such as is likely to cause or to have caused serious prejudice to the defendants either as between themselves and the plaintiff or between each other or between them and a third party."

In addition, the court in *Department of transport v. Chris Smaller Ld* (1989) 1 ALL E.R. 897 at 900 confirm this.

The plaintiff must have been guilty of inordinate and inexcusable delay in the prosecution of the action after the issue of the writ and the defendant must show prejudice flowing directly from the post writ delay which must be additional to any prejudice suffered because the plaintiff did not commence his action as soon as he could have done.' [See also *Warshaw, Gillings and Alder v. Drew* (supra)] 15 I would however, add that the statement did not address the question of whether because of the delay, there is a substantial risk that a fair trial would not still be possible. As I said in *West Indies Sugar Ltd. v. Stanley Minnell SCCA 91/92* delivered 20th December 1993 (unreported), the length of the delay per se can give rise to the substantial risk that a fair trial is impossible, and in those circumstances, there need not be evidence of prejudice - the two being exclusive of each other. In order to determine the former an examination of all the circumstances must be undertaken. In respect of the latter there must be evidence of serious prejudice."

8. The Appellant in this case filed a memorandum of appeal on 12.8.2022 against the judgement of the trial court dated 24.9.2019 there are no steps diligently for those many years to prosecute the Appeal. What does it mean to the Respondent? He or she cannot enjoy the fruits of the judgement of the trial court. I find that the delay in this case is inordinate and inexcusable and grossly unfair. For those reasons, the Appeal stands dismissed for want of prosecution with no orders as to costs.

**GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 3.11.2025**

.....

**R. NYAKUNDI**

**JUDGE**

