



**Serole v Ryce Motors East Africa Limited & another (Civil Appeal
100 of 2021) [2025] KEHC 16628 (KLR) (14 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16628 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL APPEAL 100 OF 2021
M THANDE, J
NOVEMBER 14, 2025**

BETWEEN

CANNOBIO PIETRO SEROLE APPELLANT

AND

RYCE MOTORS EAST AFRICA LIMITED 1ST RESPONDENT

SAI RAJ LIMITED 2ND RESPONDENT

RULING

1. By an Application dated 19.12.24, the Appellant seeks reinstatement of its appeal which was dismissed on 8.6.22. He also seeks that he be allowed to file the record of appeal out of time and further that the record of appeal attached to the Application be deemed as duly filed upon payment of court fees.
2. The grounds upon which the Application is premised are that the appeal was filed on 18.3.21 and was pending issuance of certified copies of proceedings judgment and decree; that despite several trips to Mariakani Law Courts, the proceedings were always not ready; that the lower court file was not traced in good time; that to date, the Appellant has not been informed that the proceedings are ready for collection; that counsel only became aware on 26.11.24 that the lower court file had been brought to this Court; that proceedings have now been obtained and the Appellant is ready to prosecute his appeal; that no prejudice will be occasioned to the Respondent but that the Appellant stands to suffer great loss and damage if the orders sought are not granted. The Appellant is willing to abide by the conditions the Court will impose.
3. In his replying affidavit sworn on 27.1.25, Mohamed Sheba, Company Secretary of the 1st Respondent stated that the appeal was lodged in November 2021 but was only served on 23.3.22. When the matter came up on 24.3.22, the Appellant abandoned his application for stay and was directed to file and serv the record of appeal with mention on 8.6.22. It was averred that no cogent reason was given for failure to attend Court on 8.6.22 and there was no compliance leading to dismissal of the appeal. Further that



no evidence has been placed before the Appellant regarding the unavailability of the proceedings or the lower court file. Additionally, that the Appellant failed to pay the costs awarded to the 1st Respondent. Further, that there has been inordinate and unexplained delay and the Court ought not to grant the orders sought.

4. The law relating to setting aside judgment or dismissal is found in Order 12 Rule 7 of the Civil Procedure Rules, which provides:

Where under this Order judgment has been entered or the suit has been dismissed, the court, on application, may set aside or vary the judgment or order upon such terms as may be just.

5. The Orders sought by the Applicant are discretionary. The rule does not provide the conditions that must be met for reinstatement of dismissed suits. The Court thus has wide discretion to grant orders on terms. The terms must however be just.
6. The conduct of a party is key in any matter where the jurisdiction of the Court to exercise its discretionary powers is invoked. In *Moses Mwangi Kimari v Shammi Kanjirapparambil Thomas & 2 others* [2014] eKLR, Gikonyo, J. stated and I concur:

We should not only look at the delay of six months since the direction of 8th November, 2012, we should look also at the entire conduct of the Plaintiff; it is negligent and tainted with a don't-care attitude towards court orders. This is not unfair indictment of the Plaintiff; it is simply an atonement of serious disobedience of court orders which no serious court of law should countenance.

7. I have considered the circumstances of the case. The Appellant failed to attend Court on 8.6.22, the return date which had been taken in the presence of both parties. Notably, no reason has been given for this failure. Further, the Appellant did not comply with the directions of the Court to file the record of appeal and none is on record to date. The Appellant has also not placed any evidence of the alleged several trips to the lower court to obtain proceedings and has not given the name the person who allegedly visited the lower court and the dates the trips were made. Further, no evidence by way of letters seeking the proceedings was exhibited. Additionally, it is the duty of a party to pursue proceedings and not to wait for a court to inform him that proceedings are ready for collection.
8. It is trite that parties to a dispute must adhere to the directions given by the court. In the case of *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 6 others* [2013] eKLR Kiage, JA stated:

This Court, indeed all courts, must never provide succour and cover to parties who exhibit scant respect for rules and timelines. Those rules and timelines serve to make the process of judicial adjudication and determination fair, just, certain and even-handed. Courts cannot aid in the bending or circumventing of rules and a shifting of goal posts for, while it may seem to aid one side, it unfairly harms the innocent party who strives to abide by the rules. I apprehend that it is in the even-handed and dispassionate application of rules that courts give assurance that there is clear method in the manner in which things are done so that outcomes can be anticipated with a measure of confidence, certainty and clarity where issues of rules and their application are concerned.

9. The Court also notes that the Appellant has been indolent in pursuing this matter. The appeal was dismissed on 8.6.22, but it is only on 19.12.24 that the present Application was filed. A delay of over 2½ years.



10. In the case of Tana Teachers' Cooperative and Credit Society Limited v Andriano Muchiri [2018] eKLR, the Court of Appeal considered an appeal from an order dismissing an appeal for non-compliance with directions of the court and had this to say:

13. On the whole therefore, the first appellate court was right in finding that the appellant had been indolent and this court has been given no reason to interfere with that finding. We are mindful of the fact that the original suit giving rise to these proceedings was filed in 1994. The respondent has yet to enjoy the fruits of her judgment 24 years down the line. Although parties are always in haste to invoke the "overriding principle" when seeking favourable exercise of discretion by the courts or covering up for some infractions they may have committed, they tend to forget that Section 1A (3) *akn ke act 1924 3 Civil Procedure Act* as well as section 3A *akn ke act 1977 15 Appellate Jurisdiction Act* enjoins them to assist the court in ensuring that court directions are complied with and that justice is dispensed expeditiously. A party cannot egregiously fail or refuse to comply with directions of the court claiming that the said directions were salutary and not accompanied by any sanctions and hope to seek refuge in the overriding principle. That in our view amounts to gross abuse of court process. There must be an end to litigation and it behoves this Court to tell the appellant that its journey ends at this point.

11. Flowing from the cited decision, it can be seen that the law enjoins parties to assist the court in ensuring that court directions are complied with and that justice is dispensed expeditiously. The Appellant has come to Court seeking reinstatement of the appeal, more than 2½ years after the same was dismissed.

12. The conduct of a party is key in any matter where the jurisdiction of the Court to exercise its discretionary powers is invoked. In *Moses Mwangi Kimari v Shammi Kanjirapparambil Thomas & 2 others* [2014] eKLR, Gikonyo, J. stated and I concur:

We should not only look at the delay of six months since the direction of 8th November, 2012, we should look also at the entire conduct of the Plaintiff; it is negligent and tainted with a don't-care attitude towards court orders. This is not unfair indictment of the Plaintiff; it is simply an atonement of serious disobedience of court orders which no serious court of law should countenance.

13. The Appellant's conduct of disobeying the Court's directions, failing to attend Court and indolence should not be countenanced. By his conduct, the Appellant derogated from the overriding objective of the expeditious, fair, just proportionate and economic disposal of the matter herein. This Court should therefore not provide succour and cover to the Appellant given his conduct.

14. This Court thus concludes that it would be a travesty of justice to exercise its discretion in the Appellant's favour. I accordingly find and hold that the Application dated 19.12.24 lacks merit and the same is dismissed. The Respondent shall have costs.

DATED, SIGNED AND DELIVERED IN MALINDI THIS 14TH DAY OF NOVEMBER 2025

M. THANDE

JUDGE

