



**Denar v Engtech Services Limited (Commercial Appeal E152 of 2024)  
[2025] KEHC 16896 (KLR) (Commercial and Tax) (18 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16896 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL APPEAL E152 OF 2024**

**JWW MONG'ARE, J**

**NOVEMBER 18, 2025**

**BETWEEN**

**JOSEPH HAMISI DENAR ..... APPELLANT**

**AND**

**ENGTECH SERVICES LIMITED ..... RESPONDENT**

**RULING**

1. On 25<sup>th</sup> June, 2024, the Court granted the Appellant's application for a stay of execution of the judgment and decree issued by the subordinate court, on the condition that he deposits the decretal sum of Kshs.409,014.00/= into a joint interest-earning account in the names of both advocates and thereafter file his appeal. As the Appellant did not comply with this order, the court, on 19<sup>th</sup> March 2025 dismissed the appeal with costs, granted the Respondent liberty to execute the judgment by the subordinate court and this matter was marked as closed.
2. This decision prompted the Appellant to file the application dated 19<sup>th</sup> March 2025 seeking to stay the execution of the dismissal order and all subsequent proceedings, pending the hearing of the appeal and that the appeal be re-opened and the Appellant be granted unconditional leave to have it heard and determined on its merits. The application is supported by the affidavit of Reynard Brian Odipo, an advocate instructed by the Appellant, sworn on 19<sup>th</sup> March 2025 and it is opposed by the Respondent through its Agent, Collins Sakwa, sworn on 14<sup>th</sup> April 2025.
3. The Appellant states that the dismissal of his appeal was due to a mistake by his advocate and he should not be punished for his advocate's negligence. That he has complied with all pre-trial procedures and was ready for the judgment date and that if the court does not intervene, the Respondent will execute the decree, causing him substantial loss and rendering the appeal pointless, even if he were to win. He states that denying him a hearing violates the rules of natural justice and his constitutional right to a



fair hearing under Articles 25(c), 50(1), and 159 of the Constitution and that the Respondent will not suffer any prejudice that cannot be compensated by an award of costs.

4. In response, the Respondent fundamentally disputes the Appellant's story. It depones that the appeal was not dismissed simply because the Appellant's advocate missed a hearing but due to the Appellant's persistent and willful failure to comply with specific court orders for nearly nine months, that is depositing the decretal sum. The Respondent outlines a history of non-compliance and neglect by the Appellant, for example, that the matter was listed in court at least six times between July 2024 and March 2025 to confirm compliance and that the Appellant's advocates failed to attend a previous mention on 27<sup>th</sup> February 2025, not just the one on 19<sup>th</sup> March 2025. That the hearing on 19<sup>th</sup> March 2025 was a "mention to confirm compliance," not a hearing to set a judgment date as the Appellant claimed.
5. The Respondent states that its advocates sent a letter on 11<sup>th</sup> February 2025 demanding compliance, which was ignored and that forgetting one date is part of a larger pattern of disregard and negligence and does not explain the prior nine months of non-compliance. It emphasizes that a case ultimately belongs to the client, implying the Appellant himself is responsible for ensuring his advocates comply with court orders. The Respondent characterizes the application as ill-conceived and misleading, brought in bad faith to frustrate the Respondent's right to enjoy the judgment and an attempt to reward deliberate contempt of court. It urges the court to dismiss the application with costs and uphold the dismissal of the appeal.
6. In addition to the positions of the parties highlighted above, they also rely on their written submissions which I have considered and I will be making relevant references to the same in my analysis and determination below.

### **Analysis and Determination**

7. As submitted by the parties, the primary issue for the court's determination is whether the orders of the court issued on 19<sup>th</sup> March 2025 should be reviewed and set aside and the appeal reinstated. The parties agree that a party that seeks the reinstatement of an appeal must demonstrate sufficient cause for non-compliance, non-attendance and/or diligence in prosecuting the appeal (see Peter Kipkurui Chemoiwo v Richard Chepserson [2021] KECA 979 (KLR)).
8. Having perused the court record, I find that the Appellant's account of the events leading to the dismissal of the appeal is materially incomplete, inaccurate and misleading. The record reveals a clear and unambiguous order issued by the Court on 25<sup>th</sup> June 2024, which directed the Appellant to deposit the decretal sum of Kshs.409,014.00/= into a joint interest-earning account as a condition precedent for prosecuting the appeal. The order further fixed the matter for mention on 30<sup>th</sup> July 2024 specifically to confirm compliance. The chronology of events thereafter, as meticulously demonstrated by the Respondent through annexed correspondence and cause lists, shows a pattern of non-compliance and neglect.
9. The Appellant clearly failed to comply with the order to deposit the decretal sum by 30<sup>th</sup> July 2024. The matter was mentioned on multiple subsequent occasions on 27<sup>th</sup> August 2024, 12<sup>th</sup> September 2024, 5<sup>th</sup> November 2024 and 27<sup>th</sup> February, 2025 to monitor compliance, which was never forthcoming. On 5<sup>th</sup> November 2024, the Appellant's Advocates informed the court that the Appellant was out of the country and he could not confirm if the decretal amount has been deposited. The Respondent's Advocates sent a letter dated 11<sup>th</sup> February 2025, urging compliance and warning of continued contempt but this letter was clearly ignored. The Appellant's Advocates also failed to attend the mention on 27<sup>th</sup> February, 2025, without any explanation.



10. It is against this backdrop of prolonged and unexplained non-compliance that the mention of 19<sup>th</sup> March 2025 was scheduled which the Appellant and his advocate did not also attend. As per the Mention Notice annexed by the Respondent and served upon the Appellant's advocates, the same clearly indicates the purpose was for "Mention for Compliance and Directions." The dismissal of the appeal on that date was explicitly because "[the] appellants have failed to comply with the orders of this court issued on 25/6/2024..." orders which had remained unfulfilled for nearly nine months as at that date. The Appellant has conveniently not addressed why he has never complied with this order of depositing the decretal sum even though it is his own advocate who had expressed willingness to deposit the same when the court was hearing his application for stay of execution.
11. In any event, I concur entirely with the Respondent's position that the dismissal on 19<sup>th</sup> March 2025 was not primarily for non-attendance but for want of prosecution, rooted in the Appellant's willful and continuous disobedience of a lawful court order. The Appellant's attempt to frame the dismissal as a result of a single diary error is an oversimplification that ignores the substantive history of contumacious conduct. Whereas I agree that the right to a fair hearing, enshrined in Article 50 of *the Constitution*, is a cornerstone of justice, it is not a license to ignore court directives with impunity. A litigant who demonstrates such a persistent disregard for the court's authority cannot later invoke the right to a hearing as a shield from the consequences of their own actions. The Appellant, through his advocates, was afforded multiple opportunities to be heard but chose not to comply with the fundamental condition set for that hearing to proceed.
12. In my view, to grant the orders sought would not only condone a serious contempt of court but would also send a wrong signal that parties can flout court orders for extended periods and readily obtain reinstatement upon a plea of advocate error. This would undermine the integrity and authority of the court and the entire Judiciary.

### **Conclusion and Disposition**

13. In conclusion, I find and hold that the Appellant has not offered a reasonable and satisfactory explanation for his failure to comply with the court order of 25<sup>th</sup> June 2024. His application dated 19<sup>th</sup> March 2025 is devoid of merit and the same is hereby dismissed with costs to the Respondent.

**DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 18<sup>TH</sup> DAY OF NOVEMBER 2025**

.....

**J.W.W. MONGARE**

**JUDGE**

In The Presence Of

Mr. Odipo for the Appellants.

Mr. Wasaga for the Respondents.

Amos - Court Assistant.

