



**Kananu v Rimberia & another (Environment and Land Appeal
E047 of 2023) [2025] KEELC 8303 (KLR) (27 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 8303 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E047 OF 2023**

**JO MBOYA, J
NOVEMBER 27, 2025**

BETWEEN

MARTHA KANANU APPELLANT

AND

JEREMIAH MWATHE RIMBERIA 1ST RESPONDENT

MERU COUNTY LAND REGISTRAR 2ND RESPONDENT

RULING

1. Before me is the Notice of Motion Application dated 21st August 2025 brought pursuant to the provisions of sections 3; 3A and 63 (e) of the Civil Procedure Act [though erroneously stated to be civil procedure rules]. The application seeks the following reliefs:
 - i. That this application be certified urgent
 - ii. The court be pealed to vary and extend the time frames ordered on 19/2/2025 and allow the applicant to comply
 - iii. That this honourable court be pleased ot set aside dismissal orders of 13/3/2025 and reinstate the appeal for hearing on merit.
 - iv. That costs of this application be provided for.
2. The instant application is anchored on a singular ground, namely; that the advocate for the appellant/ applicant wrongly diarized the case. Furthermore, the application is premised on the supporting affidavit sworn by Mercy Kaume [advocate] and wherein the deponent has highlighted various reasons why same failed to attend court on 13th March 2025, when the appeal beforehand came up before the court for directions. In addition, the deponent has also annexed a copy of the duly extracted and sealed order issued on 6th August 2025 vide CMC ELC Misc Application No. E015 of 2023, which order underpins the subject appeal.



3. The 1st respondent herein filed a replying affidavit sworn on 18th November 2025 and wherein the 1st respondent has opposed the application. In particular, the 1st respondent has averred that the appellant and her learned counsel had been given sufficient indulgence to file/lodge the order appealed against. Furthermore, it was posited that despite the various opportunities to file and lodge the order appealed against, the applicant exhibited/slovenliness and want of diligence. Moreover, it was contended that the subject application has been mounted with unreasonable and inordinate delay. In this regard, the 1st respondent contended that the applicant is not entitled to partake of or benefit from the equitable discretion of the court.
4. The 2nd respondent, represented by the Hon. Attorney General, did not file any response to the subject application. Moreover, learned counsel who appeared for the 2nd respondent intimated to the court that the 2nd respondent shall neither oppose nor support the subject application. For good measure, learned counsel posited that same shall leave the matter to the determination of the court.
5. The subject application came up for hearing on 25th November 2025 whereupon the advocates for the respective parties intimated to the court that same were ready to proceed with the hearing. To this end, the court issued directions inter alia that the application be canvassed vide oral submissions. Suffice it to state that the submissions by/on behalf of the respective parties are on record.
6. Briefly, learned counsel for the applicant adopted the grounds at the foot of the application dated 21st August 2025, reiterated the grounds and the averments at the foot of the supporting affidavit. Furthermore, learned counsel thereafter highlighted four [4] pertinent issues for consideration by the court.
7. Firstly, learned counsel for the applicant has submitted that the dismissal of the appeal arose because learned counsel had mis diarized the return date. In particular, it was contended that instead of diarizing the 13th March 2025, learned counsel diarized 18th March 2025. In this regard, learned counsel contended that her failure to attend court on the scheduled date was informed by an honest and inadvertent mistake. Moreover, learned counsel conceded that the mistake was one made by counsel and thus the mistake ought not to be visited upon the innocent client, namely; the applicant.
8. Secondly, learned counsel invoked the rule of natural justice and the right to fair hearing and thereafter submitted that it behooves the court to afford the parties an opportunity to be heard. In this regard, it was contended that the court should endeavor to afford the applicant the latitude and opportunity to canvass her appeal before the court. On the contrary, it was submitted that the court should not resort to driving away a party from the seat of justice.
9. Thirdly, learned counsel for the applicant has submitted that the instant application has been filed timeously and without undue delay. Furthermore, learned counsel has posited that the applicant had previously filed the application dated 18th March 2025, but which application was withdrawn because counsel had annexed an erroneous order and not the one that underpins the subject appeal. For good measure, it was submitted that the previous application was filed hardly five days after the orders dismissing the appeal were made.
10. Additionally, it was submitted that the delay that underpins the filing of the subject application was occasioned by the fact that the applicant was taken ill and thus same had to seek/procure medication. To this end, learned counsel has referenced the contents of paragraph 7 of the supporting affidavit.
11. The next issue that has been canvassed by learned counsel for the applicant is to the effect that the respondents shall not suffer any prejudice, harm or injustice if the orders sought are granted. On the contrary, it has been submitted that the respondents shall be afforded the opportunity to defend the



- appeal and to canvass their respective positions during the plenary hearing of the appeal. Moreover, it was submitted that any prejudice to be suffered can be atoned for by payment of costs.
12. Finally, learned counsel for the applicant has submitted that the dispute beforehand touches and concerns land. Furthermore, learned counsel has posited that issues pertaining to land are extremely emotive and sensitive and thus the court should strive to hear and determine such disputes on merits.
 13. In addition, it was contended that the appeal beforehand raises pertinent issues of law, inter alia, that the appellant was devoid of the requisite locus standi to be sued in the subordinate court; the subordinate court was not seized of jurisdiction; and that the order appealed against was irregular. Counsel has therefore contended that the court ought to allow the subject application, reinstate the appeal and facilitate the hearing of the appeal on merits.
 14. Learned counsel for the 1st respondent adopted the replying affidavit sworn on 18th November 2025; and thereafter highlighted four [4] key issues for consideration. Firstly, learned counsel for the 1st respondent has submitted that even though the court is seized of the requisite discretion to set aside, vary or review dismissal orders, such discretion must be exercised on the basis of established judicial principles. In particular, learned counsel posited that the discretion must be exercised reasonably and judiciously. On the contrary, learned counsel for the 1st respondent has submitted that the discretion must not be exercised arbitrarily, whimsically and or capriciously.
 15. Moreover, learned counsel for the 1st respondent has submitted that the applicant has neither demonstrated nor exhibited sufficient basis/cause to warrant the exercise of equitable discretion in favour of the applicant. Additionally, it has been contended that the subject appeal was not only dismissed for non-attendance, but also for non-compliance with the directions of the court that had been issued on 19th February 2025.
 16. Secondly, learned counsel for the 1st respondent has submitted that the subject application is misconceived and legally untenable. In any event, it has been submitted that the application is superfluous in so far as the orders of the court issued on 19th February 2025, have neither been varied and or reviewed. According to counsel, the orders sought herein cannot issue until and unless the previous orders have been set aside.
 17. Thirdly, it has been submitted that the instant application has been filed with unreasonable and inordinate delay, which delay has neither been explained nor accounted for. Moreover, learned counsel contended that the application has been filed after a duration of more than 5 months from the date of the dismissal of the appeal. To this end, it was submitted that the duration of delay divests the court of discretion to set aside the impugned orders.
 18. The next issue that has been highlighted is to the effect that the applicant herein appears to be keen to abuse the due process of the court and hence should not partake of equitable discretion. It has been submitted that the applicant herein has since filed yet another suit namely, Meru ELC E006 of 2025 OS and wherein the applicant is seeking adverse possession over and in respect of the suit property. The court has been invited to find and hold that the conduct of the applicant does not deserve mercy in the eyes of the law.
 19. Learned counsel for the 1st respondent has submitted that the applicant herein has been guilty of failure to comply with and or abide by the directions of the court. The court has been invited to take into account the antecedent conduct of the appellant/applicant.
 20. Having reviewed the notice of motion application; the supporting affidavit and the annexure[s] thereto; the replying affidavit on behalf of the 1st respondent and the oral submissions canvassed



on behalf of the parties, I come to the conclusion that the determination of the subject application turns on three [3] key issues, namely; whether the application has been filed with unreasonable and inordinate delay or otherwise; whether the applicant has established sufficient cause to warrant the exercise of equitable discretion in her favour; and whether the respondents shall suffer any prejudice or injustice [if at all] if the orders sought are granted.

21. Before venturing to address the issues highlighted in terms of the preceding paragraphs, it is imperative to underscore that the subject appeal touches on and concerns a land dispute. Furthermore, it is imperative to reiterate that the appeal arises out of a claim where the suit property was registered in the names of the husband of the appellant and the 1st respondent as joint owners. In addition, it is also important to underscore that the proceedings in the subordinate court and which birthed the subject appeal, relate to an application to partition the suit property between the joint owners, one of whom is now deceased.
22. To the extent that the dispute touches on and concerns land, it is imperative to reiterate that land disputes ought and should be determined on merits, unless there exist compelling reasons on the contrary. In respect of the instant matter, the dismissal of the appeal is indicated to have arisen because of the mistake of counsel.
23. Consequently, the question that the court will have to engage with is whether the mistake under reference is such that the applicant must be subjected to punishment or discipline by way of being driven away from the seat of justice.
24. Back to the issues. The counsel for the 1st respondent submitted that the application beforehand was filed with unreasonable and inordinate delay and furthermore, that the delay in question has neither been accounted for nor explained. To this end, learned counsel for the 1st respondent invited the court to find and hold that the applicant is not entitled to benefit from equitable discretion on the basis of inordinate delay.
25. It is important to state that the subject appeal came up for directions and further orders on 13th March 2025. On the said date, learned counsel for the applicant failed to attend court. It is the said failure that precipitated the dismissal of the appeal for non-attendance/want of prosecution. In addition, it is also important to point out that on the said date, learned counsel for the appellant had also not filed the correct order underpinning the appeal.
26. Nevertheless, it is not lost on me that the applicant herein returned back to court vide the application dated 18th March 2025 and wherein same sought to vary and impeach the dismissal orders made on 13th March 2025. It is instructive to state that the previous application, namely; the one dated 18th March 2025, was filed within 5 days of the dismissal orders. Certainly, the said application was timeously filed.
27. I also wish to point out that the application dated 18th March 2025 was thereafter withdrawn on 8th April 2025. To this end, the court decreed that the applicant shall not file any further application until and unless the costs of the withdrawn application were paid. For good measure, the costs were assessed and certified in the sum of Kshs.10,000 only.
28. Additionally, the applicant has stated that the delay in filing the current application was because same was looking for the cost[s] so as to comply with the orders of the court. Moreover, the applicant has posited that same has since paid the costs. Besides, the applicant has also contended that part of the reason for the delay was because of indisposition. [See the contents of paragraph 7 of the supporting affidavit].



29. I have considered the averments contained in the supporting affidavit and the explanation canvassed by learned counsel for the applicant. In my humble view, the applicant has diligently explained the circumstances underpinning the delay in the filing of the subject application. Moreover, I hold the view that the duration taken was neither unreasonable nor inordinate, taking into account the explanation given.
30. In the premises, my answer to issue No. 1 is to the effect that the period taken before the filing of the current application has been suitably and duly accounted for; and explained. [See *Andrew Chemaringo vs Paul Kipkorir Kibet* (2018) eKLR; *Kimani vs Njoroge* (2022) KECA and *Nicholas Kipkorir Arap Salat vs IEBC & 7 others* (2014) eKLR].
31. Turning to the second issue, it is important to highlight that what is before me is a land dispute. Moreover, there appears to be so much beneath the dispute beforehand. There is an indication that one of the joint owners was murdered in an endeavor to facilitate the invocation of the doctrine of survivorship. [jus accrucendi]. This is an issue that was raised/ mentioned by Learned Counsel for the Applicant; and will very well be dealt with in due time.
32. Nevertheless, the critical question to discern is whether it is in the interest of justice to allow the substantive issues underpinning the appeal to be fully canvassed and adjudicated upon. In this regard, I beg to adopt and reiterate the sentiments of the court in *Elizabeth Wambui Githinji & 29 others vs Kenya Urban Roads Authority (KURA) & Another* [2019] eKLR, where the Court [Per Ouko PCA] stated thus;

In Kenya the attachment to land is passionate, emotional and almost fanatical. Nations, neighbours, siblings, spouses and even strangers fight over land. In some instances, the disputes degenerate into bloodshed and death. This Court in *Gitamaiyu Trading Company Ltd v Nyakinyua Mugumo Kiambaa Co. Ltd & 11 others* Civil Appeal No. 84 of 2013, explained why land is such an important asset thus;

“Land, no doubt, is not only the most important factor of production but also a very emotive issue in Kenya. Land remains the most notable source of frequent conflicts between persons and communities.” [Underlining supplied].

33. Other than the emotive and sensitive nature of land, there is also the question that the suit/proceedings in the subordinate court, which birthed the order being appealed against, was mounted against the appellant when same had not taken out a grant of letters of administration. In this regard, it was posited that there is a pertinent issue of law touching on and concerning locus standi.
34. Furthermore, I have looked at the order appealed against and what becomes apparent is that the lower court appears [I say appears] to have made substantive orders vide a miscellaneous proceedings.
35. In my humble view, the appeal beforehand clearly raises arguable issues and hence it would be just, expedient and proportionate that the parties, and more particularly the applicant, be allowed to canvass her case before this court. Suffice it to state that the courts exist to render justice and not to mete out discipline or punishment on defaulting parties.
36. Before concluding on this issue, I am reminded of the words of Apaloo J.A [as he then was] in the case of *Philip Keipto Chemwolo & another v Augustine Kubende* [1986] KECA 87 (KLR), where it was stated thus;

I think a distinguished equity judge has said:



“Blunders will continue to be made from time to time and it does not follow that because a mistake has been made that a party should suffer the penalty of not having his case determined on its merits.”

I think the broad equity approach to this matter is that unless there is fraud or intention to overreach, there is no error or default that cannot be put right by payment of costs. The court, as is often said, exists for the purpose of deciding the rights of the parties and not for the purpose of imposing discipline.

37. Next is the issue as to whether the respondents or any of the respondents shall be disposed to suffer any prejudice or injustice, if the orders sought are granted. Suffice it to state that if the subject application is allowed, the appeal shall be reinstated for hearing and determination on merits. In addition, there is no gainsaying that the parties shall be afforded the opportunity to canvass and ventilate their respective positions before the court. Pertinently, all the parties would partake of and benefit from the right of access to justice [Article 48] and the right to fair hearing and trial in terms of Article 50 of *the Constitution*].
38. It is paramount to state that courts of law are enjoined to foster and facilitate the realization of the objects, values and principles espoused by *the constitution*. In particular, article 159 (2) (e) of *the constitution* is apt and succinct.
39. In my humble view, allowing the subject application and reinstating the appeal shall serve the interests of justice and no prejudice, harm, injury, or injustice will be meted out on the respondents. In any event, there is no gainsaying that the inconvenience [if any] suffered by the respondents can be atoned for or indemnified by an award of costs.
40. In a nutshell, and being guided by the various articles of *the constitution* [whose details I have highlighted elsewhere herein above] I come to the conclusion that the subject application is meritorious. Moreover, I hold the view that courts of law do not exist to mete out discipline or punishment on the parties. Additionally, a litigant, the applicant not excepted, ought not to be driven away from the seat of justice, unless there does exist a compelling reason or basis to warrant such a scenario. In respect of the instant matter, none is discernible.

Final Disposition.

41. For the reasons which I have adverted to in the body of the ruling, it must have become crystal clear that the subject application is meritorious. Moreover, it is evident that the court is inclined towards exercising its discretion to foster/facilitate the enjoyment of the rights of access to justice.
42. In the upshot, the final orders of the court are as hereunder;
 - i. The Application dated 21st August 2025 be and is hereby allowed.
 - ii. The Orders of the court made on 13th March 2025 be and are hereby set aside.
 - iii. The subject appeal be and is hereby reinstated for hearing and determination on merits.
 - iv. The timelines set for the filing of the Supplementary record of appeal; and in particular the order appealed against be and are hereby extended.
 - v. The Appellant shall file and serve the Supplementary record of appeal including the order appealed against and same to be filed and served within 7 days from the date hereof.
 - vi. The Appeal herein shall be heard and disposed off on priority basis.



- vii. Costs of the Application be and are hereby awarded to the 1st respondent only.
- viii. The Costs in terms of [vii] be and are hereby assessed in the sum of Kshs.10,000/= only; and same shall be borne/paid by Learned counsel for the applicant personally.

43. It is so ordered.

DATED, SIGNED AND DELIVERED AT ISIOLO THIS 27TH DAY OF NOVEMBER 2025.

OGUTTU MBOYA, FCI Arb; CPM [MTI-EA].

JUDGE

In the presence of:

Hussein – Court Assistant

Mrs. Mercy Kaume for the Appellant/applicant

Mr. Ochieng for the 1st Respondent

Ms. Miranda [Senior Litigation Counsel] for the 2nd Respondent

