

4. In response, the 1st Respondent vide **Mrs. Elizabeth Chungu**, swore a Replying Affidavit on **4th March 2025**, opposing the Motion. She deposed that the Applicant's application lacks merit and that it ought be dismissed.
5. In reaction to the replying affidavit, the Applicant swore a Further Affidavit on **18th May 2025**, wherein she deposed that the appeal was dismissed for want of prosecution and not on merit.
6. Vide Court directions issued on **18th June 2025**, parties were ordered to canvass the Motion application by way of written submissions. Only, the Applicant and the 1st Respondent complied with the Court's directive.
7. The main issue for determination is whether the Applicant has satisfied threshold for reinstatement of his appeal.
8. It is instructive to note that save for the initial instructions to his former Advocate to institute an appeal against the decision of the trial Court in Bungoma CMC No. 397 of 2017, no material was tendered before this Court to demonstrate diligent and persistent attempts by the Applicant at following up on the status of his appeal or to indicate any difficulties experienced in that regard. I am not persuaded that the Applicant took any reasonable effort to obtain the trial court's record with the aim of progressing his appeal.
9. Furthermore, the legal principle that the mistake of an Advocate ought not be visited upon the client has no blanket application. It is trite law that a suit and/or an appeal ultimately belongs to the litigant and not the Advocate, hence it is the litigant's duty to pursue or otherwise take active steps to ensure the timely prosecution of his claim or appeal. In this regard I find guidance in the Court of Appeal

decision in **Habo Agencies Limited v Wilfred Odhiambo Musingo [2015] eKLR** where it held that:

“It is not enough for a party in litigation to simply blame the Advocates on record for all manner of transgressions in the conduct of the litigation. Courts have always emphasized that parties have a responsibility to show interest in and to follow up their cases even when they are represented by counsel.”

10. In the present instance, no credible material was tendered to demonstrate any attempts made by the Applicant himself at following up on the progress of the appeal with the erstwhile Advocates or prompting them to timeously prosecute the appeal since its inception. The appeal had been dormant for a period of over one (1) since it was instituted hence the dismissal. Additionally, there was an inordinate delay of close to seven (7) months between the date of dismissal of the appeal and the filing of the instant Motion.
11. The Applicant had been indolent yet he now craves for a favourable exercise of this court’s discretion. The principles of equity dictate that this court ought to aid the vigilant and not the indolent.
12. When considering an application for reinstatement of a suit this court has to take into account the reasons for dismissal, the delay if any in moving the court for reinstatement, the prejudice likely to be suffered by the respondent and the general conduct of the applicant throughout the pendency of his appeal. The exercise of this court’s discretion to set aside an ex parte order is aimed at avoiding injustice or hardship resulting from an accident,

inadvertence or excusable mistake or error but not to assist a person who deliberately seeks to obstruct or delay justice. This was the holding in the Court of Appeal Case of Richard Nchapi Leiyagu Vs IEBC & 2 Others Civil Appeal No 18 of 2013.

13. The Applicant cannot expect this Court to exercise its discretion in his favour, to the detriment of the Respondent who has an unsatisfied decree and therefore lawfully entitled to enjoy the fruits of judgment. The respondent herein will stand to suffer prejudice if the orders sought are granted. Certainly, litigation must come to an end. The Court rejects the prayer seeking to reinstate the appeal herein and the other prayer for stay of execution has thus been rendered moot.
14. Consequently, the Notice of Motion dated **5th February 2025**, is without merit and is hereby dismissed with costs to the Respondent.

Delivered, Signed and Dated at Bungoma this 27th day of November, 2025.

Mwanaisha S. Shariff
Judge

IN THE PRESENCE OF :

N/A for the Appellant

N/A for the Respondent

Peter Machoni - Court Assistant