Gikonyo & another v Karume & another (Suing as the representative of the Estate of John Kimani Njuki) (Civil Appeal E637 of 2023) [2026] KEHC 664 (KLR) (Civ) (29 January 2026) (Ruling)

Neutral citation: [2026] KEHC 664 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL

CIVIL APPEAL E637 OF 2023

AC MRIMA, J

JANUARY 29, 2026

BETWEEN

STEPHEN WAWERU GIKONYO ..... 1ST APPELLANT

CHARLES KOMU GIKUNJI ..... 2ND APPELLANT

AND

WALLIAM NJUKI KARUME & IRENE WANJIKU KIMANI ..... RESPONDENT

SUING AS THE REPRESENTATIVE OF THE ESTATE OF JOHN KIMANI NJUKI

RULING

Background:

1. The appeal before this Court arose from a tragic road traffic accident that occurred on 28th October 2018, along Tom Mboya Street, Nairobi, resulting in the death of John Kimani Njuki, (hereinafter referred to as 'the deceased'). The deceased was crushed between motor vehicle registration number KBZ 754V, which he was boarding, and motor vehicle registration number KAG 155F, owned by Charles Komu Gikunju, the 2nd Appellant and driven by Stephen Waweru Gikonyo, the 1st Appellant herein.

2. Seeking to get compensation on behalf of the deceased, William Njuki Karume & Irene Wanjiku Kimani, the respondents herein, instituted Civil Suit No. 6023 of 2020 (later E6023 of 2022) before the Magistrates Court wherein the Appellants were found 100% liable.

3. Aggrieved by the quantum of damages and the finding on liability, the Appellants filed a Memorandum of Appeal on 10th July 2023.

4. However, the Appellants did not prosecute the appeal. This Court subsequently issued a show cause notice why the appeal should not be dismissed. Upon hearing of the NTSC, the Court directed the Appellants to file a Record of Appeal within 45 days failure which the appeal stood dismissed. The failure to abide by the foregoing timelines prompted the application, the subject of the ruling.

The Applicants' case:

5. Through a Notice of Motion dated 9th May 2025, brought under Order 45 Rule 1, Order 50 Rule 6, and Order 51 Rule 1 of the Civil Procedure Rules, 2010, the Applicants sought the following orders:

    1. Spent.

    2. That pending the hearing and determination of this Application inter-partes, a stay of execution of the decree and order of Hon. P. K. Rotich issued on 10th March 2023 and all consequential orders and proceedings thereto be and is hereby issued and/or granted.

    3. That the Honourable Court be pleased to grant leave to the firm of Kairu & Mccourt Advocates to come on record as advocates for the defendant/ Applicant herein in place of the firm of Kimondo Gachoka & Company Advocates.

    4. That this Honourable court be pleased to reinstate and readmit Milimani HCCA E637 of 2023 for hearing and determination.

    5. That this Honourable Court do make any such further and/or other orders and issue any other relief it may deem just to grant in the interest of justice.

    6. That the costs of this Application abide the outcome of the Appeal.

6. In support of the application, the Appellants relied on the Supporting Affidavit of Lawrence Njuguna, deposed to on 9th May 2025. It was his case that the failure to file the Record of Appeal was not a result of indolence but was occasioned by the Registry's failure to supply certified copies of the proceedings and judgment, despite requests and payments made on 30th March 2024, 3rd June 2024, and 19th June 2024. He deposed that the dismissal on 4th March 2025 occurred because the trial Court file was not availed to confirm the typing of the proceedings, an administrative failure which should not be visited upon them.

The submissions

7. In written submissions dated 23rd May 2025, the Applicants conceded that an unwitting error was made in the drafting of the application by indicating the wrong law firm, which they termed an inadvertent mistake curable under Order 51 Rule 10(2). Relying on Article 159(2)(d) of *the Constitution*, they urged the Court to administer justice without undue regard to technicalities.

8. The Applicants relied heavily on the case of Grace Njeri Theuri -vs- John Mburu Wainaina [2022] eKLR, in arguing that the procedure for dismissal requires that directions must be given before an appeal is dismissed for want of prosecution, and that the Registrar must issue notice to the parties.

The Respondent's case:

9. The Respondents opposed the application through Grounds of Opposition dated 23rd May 2025. They contended that the appeal was automatically dismissed on 21st January 2025, not 4th March 2025, following the lapse of a 45-day window granted by Justice Omido on 3rd December 2024. The Respondents submitted that the Appellants were present in Court when the orders were issued but

took no steps to comply or seek an extension of time within the requisite period. They argued that the Appellants only took action after being jolted to action a Notice to Show Cause a year and a half after filing the appeal.

10. Invoking the maxim that equity aids the vigilant not the indolent, the Respondents asserted that the Appellants did not merit the exercise of the Court's discretion. They further averred that the application was brought in bad faith to delay the Respondents from enjoying the fruits of their judgment.

Analysis:

11. Having considered the pleadings and the rival submissions, the following issues arise for determination: -

    i. Whether the Appellants have established sufficient cause to warrant the reinstatement of the appeal.

    ii. Depending on (i) above whether the defect in the drafting of the application regarding the Advocate on record is fatal.

    iii. Depending on (ii) above, whether the Court should grant a stay of execution and leave to change Advocates.

12. A consideration of the above issues now follows.

Whether the Appellants have established sufficient cause to warrant the reinstatement of the appeal:

13. The entirety of the appellants' case revolves around the question whether they have demonstrated sufficient cause. Therefore, it is incumbent upon this court to appreciate the import of the term. In the case of Wachira Karani -vs- Bildad Wachira [2016] KEHC 6334 (KLR) the Court, in a bid to unravel the meaning of the term, observed as follows;

    ... The applicant is required to satisfy to the court that he had a good and sufficient cause. What does the term "sufficient cause" mean.? The Court of Appeal of Tanzania in the case of The Registered Trustees of the Archdiocese of Dar es Salaam vs The Chairman Bunju Village Government & Others[9] discussing what constitutes sufficient cause had this to say:-

    > " It is difficult to attempt to define the meaning of the words 'sufficient cause'. It is generally accepted however, that the words should receive a liberal construction in order to advance substantial justice, when no negligence, or inaction or want of bona fides, is imputed to the appellant" (Emphasis added)

14. In Daphene Parry vs Murray Alexander Carson[10] the Court had the following to say: -

    > ... Though the court should no 'doubt' give a liberal interpretation to the words 'sufficient cause,' its interpretation must be in accordance with judicial principles. If the appellant has a good case on the merits but is out of time and has no valid excuse for the delay, the court must guard itself against the danger of being led away by sympathy, ... (emphasis added)

15. This Court has carefully sifted through the file. The chronology of events reveals not merely a series of unfortunate administrative delays, but procedural non-compliance by the Appellants. To appreciate the magnitude of the Appellants' inaction, this Court will revisit the timelines. The judgment sought to be appealed was delivered on 10th March 2023. The Respondents, who lost their son and were awarded

damages, having been kept waiting for over two years. More critical to this Court is the order of Hon. Justice Omido issued on 3rd December 2024. The Court, in its indulgence, granted the Appellants 45 days to file their Record of Appeal. The Appellants were present in Court when these directions were given.

16. The 45-day period lapsed on or about 21st January 2025. During this critical window, the Appellants did not file the Record. More importantly, they did not apply for an extension of time before or immediately the deadline expired. The dismissal eventually crystallized automatically in January. Yet, the Appellants waited until May 2025, 4 months after the dismissal, to file the instant application for reinstatement.

17. Recently, the Court of Appeal in Chabari -vs- Tharaka Nithi County Government & another (Civil Appeal 293 of 2019) [2025] KECA 558 (KLR) (28 March 2025) (Judgment) discussed discretion and the fact that a party's conduct in a matter largely dictates its favourable exercise. The learned judges observed;

> ... Moreover, it is without doubt that courts will readily excuse a mistake of counsel if it affords a justiciable, expeditious and holistic disposal of a matter. However, it is to be noted that it is not a blanket application and exercise of such discretion is by no means automatic as was held by this Court in Tana and Athi Rivers Development Authority vs Jeremiah Kimigho Mwakio, Patrick K. Mulisho, Mohamed Godhana & Amos Amitai [2015] KECA 674 (KLR). The court must strive to look at the conduct of the party pleading no fault on its part in order to make a just decision.

18. In Ivita -vs- Kyumbu [1975] KEHC 4 (KLR) the Court, in speaking to delay, observed thus

In the Fitzpatrick case Lord Denning MR said at page 658:

> .....it is the duty of the plaintiff's adviser to get on with the case. Public policy demands that the business of the courts should be conducted with expedition. Just consider the times here. The accident was on December 13, 1961..... It is impossible to have a fair trial after so long a time. The delay is far beyond anything, which we can excuse. This action has gone to sleep for nearly two years. It should now be dismissed for want of prosecution.

19. Drawing from the above, it must be pointed out that the directions of 3rd December 2024 were brought about by the Applicants own indolence. They had not taken steps to prosecute their appeal for more than one year, and the Court, pursuant to Order 42 Rule 35(2) of the Civil Procedure Rules issued a Notice to Show Cause why the appeal should not to be dismissed. The Appellants' sole defence is that the Registry failed to supply certified proceedings despite payments made in March and June 2024. While this Court takes cognizance of the fact that registries can be inefficient, this excuse collapses under scrutiny when applied to the events of December 2024.

20. When Hon. Justice Omido issued the 45-day ultimatum on 3rd December 2024, the Appellants knew they did not have the proceedings. They knew they had paid for them months prior, in March and June 2024, and had not received them. However, they did not raise the issue before the Judge for further intervention.

21. The Court of Appeal in the case of Rebecca Mijide Mungole & another -vs- Kenya Power & Lighting Company Ltd & 2 others [2017] KECA 544 (KLR) while discussing sufficient cause was categorical that reviving an abated suit is not a matter of right. The learned judges observed thus;

> ... After time to apply has been enlarged and the legal representative has been joined, the focus and burden shifts to him to show cause why the abated suit should be revived. A prayer for the revival of the suit cannot be allowed as a matter course or right. If the applicant demonstrates and the court is satisfied that he was prevented by any sufficient cause from continuing the suit, the court will allow the revival of the suit upon such terms as to costs or otherwise as the court may think fit. The operating phrase in rule 7(2) "sufficient cause" has been broadly and liberally defined, in order to advance substantial justice. Liberal construction should not be done with the result that one party is thereby prejudiced. When the delay is on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the applicant, the court will not revive the abated suit. If a party has been negligent or indifferent in pursuing his rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to him in law. The explanation has to be reasonable and plausible, so as to persuade the Court to believe that the explanation rendered is not only true, but justifies exercising judicial discretion in favour of the applicant.(emphasis mine)

22. In this Court's view, the Applicant, knowing the clock was ticking on a Court-mandated deadline (after one year's inaction) would have either immediately moved the Court for an extension of time before the 45 days expired or formally moved the Court and explain its difficulty within the compliance period. The Appellants did neither. They sat back, allowed the 45 days to lapse, allowed the appeal to stand dismissed, only to file this application in May 2025, five months later. As correctly submitted by the Respondents, the Appellants chose not to take any steps to prosecute the appeal until it was too late. This is not a case of a party hindered by the system; it is a case of a party indolence.

23. Litigants ought to put measures in place to ensure compliance with an order that provides for dismissal upon default. Such an order is self-executing. Court timelines are not mere suggestions that can be overridden by filing a belated Motion months after non-compliance. In the Rebecca Mijide Mungole & another case [supra], the Court of Appeal discussed the significance of timelines that could be cured by Article 159 of *the Constitution*. The Court observed thus;

> For our part, we note, first that the application was brought after considerable delay. The Court in Charles Wanjohi Wathuku-vs-Githinji Ngure & Another Civil Application No. of 2016 stressed the importance of strict application of timelines set by the law stating that;
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> "Timelines are not technicalities of the procedure which may be accommodated under Article 159 of *the Constitution* or section 3A and 3B of the *Appellate Jurisdiction Act*".
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> This was reiterated in John Mutai Mwangi & 26 Others v. Mwenja Ngure & 4 Others, Civil Appl. No 126 of 2014, cited by learned counsel for the respondent, where it was held, in relation to rule 82 of the Court of Appeal Rules that;
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> That timeline is strict and is meant to achieve the constitutional, statutory and rule-based objective of ensuring that the Court processes dispense justice in a timely, just, efficient and cost-effective manner.

24. Flowing from the foregoing, this Court must balance the Appellants' right of appeal against the Respondents' right to the fruits of their judgment. The judgment is now over two years old. The

Respondents are being dragged through an appellate process that the Appellants have shown no urgency in prosecuting. This Court is, hence, not persuaded that the application is merited since no sufficient cause has been demonstrated by the Appellants.

25. With the foregoing findings, the two other issues become moot.

Disposition:

26. Accordingly, the following final orders hereby issue:

    (a) The Notice of Motion dated 9th May 2025 is hereby dismissed in its entirety.

    (b) The Appellants to bear the costs of this application.

    (c) This matter is hereby marked as CLOSED.

    Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 29TH DAY OF JANUARY,2026.

A. C. MRIMA

JUDGE

Ruling virtually delivered in the presence of:

No appearance for parties.

Michael/Amina – Court Assistants.