



Leonard v Leonard (Suing as the Legal Representative of the Estate of Leonard M'Rithaa) & another (Environment and Land Appeal E005 of 2025) [2026] KEELC 361 (KLR) (27 January 2026) (Ruling)

Neutral citation: [2026] KEELC 361 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT CHUKA
ENVIRONMENT AND LAND APPEAL E005 OF 2025
BM EBOSO, J
JANUARY 27, 2026**

BETWEEN

GODFREY KIRUJA LEONARD APPELLANT

AND

TERESIA IGOKI LEONARD (SUIING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF LEONARD M'RITHAA) 1ST RESPONDENT

LUCY GATAKA T/A LICENCED SURVEYOR 2ND RESPONDENT

RULING

1. On 26/6/2025, the appellant was granted 60 days within which to file and serve the record of appeal in this appeal, to facilitate disposal of the appeal. On 23/9/2025, the appellant was given a further 14 days within which to file and serve the record of appeal. On 27/10/2025, the appellant was, once more, given an additional 14 days within which to file and serve the record of appeal. At the request of the respondent, the court issued an order to the effect that, in default of compliance by the appellant, the appeal was to stand dismissed for want of prosecution. The court listed the appeal for directions on 24/11/2025.
2. Come 24/11/2025, counsel for the appellant attended court and initially informed the court that he did not have details relating to the filing and service of the record of appeal. On his part, counsel for the respondent stated that the 14 days period lapsed on 10/11/2025 and that by that time, the appellant had not complied with the order of the court. Counsel for the appellant contended that the appeal stood dismissed effective 10/11/2025. At that point, counsel for the appellant stated that the record of appeal was filed on 21/11/2025 and served on the same day.



3. Arising from the above submissions, the court rendered a brief ex-tempore ruling marking the appeal dismissed in the following terms:
 - “1. By dint of the order of 27/10/2025, this appeal stood dismissed on 10/11/2025. The appeal is marked “dismissed for want of prosecution.”
 2. In tandem with the principle in Section 27 of the *Civil Procedure Act*, the appellant shall bear costs of the appeal.”
4. What followed was an application by the appellant, dated 24/11/2025, through which he sought an order reinstating the appeal. In addition, the appellant sought an order staying execution of the judgment and decree in Chuka CMC E & L Case No 33 of 2020, pending the hearing and disposal of the appeal. The said application is the subject of this ruling. The application is opposed by the respondent.
5. The case of the appellant/applicant is that on 24/11/2025, he did not have the benefit of his physical file and arising from the above circumstances, he erroneously submitted that the record of appeal had been filed on 21/11/2025 after the lapse of the 14 days that had been granted by the court. It is the case of the applicant that the correct position is that the record of appeal was filed on 27/10/2025 and subsequently the Court Registry requested for a hard copy of what had already been filed on 27/10/2025. The hard copy is what was delivered on 21/11/2025. The applicant argues that the record of appeal having been filed on 27/10/2025, there was compliance with the order of the court, hence the dismissal order should not have been issued. He concedes that he made erroneous submissions to the effect that the record of appeal had been filed on 21/11/2025 yet the correct position was that it was filed on 27/10/2025.
6. The applicant admits that service of the record of appeal was effected on 21/11/2025 and states that there was an oversight. His counsel apologized for the oversight.
7. The respondent opposed the application through a replying affidavit dated 1/12/2025, sworn by Ireri Charles Mugo. The case of the respondent is that the appellant was directed by the court to file and serve the record of appeal within 14 days of the order and in default, the appeal was to be dismissed for want of prosecution. The respondent further contends that the appellant failed to comply with the orders of the court and the appeal was dismissed.
8. The respondent states that the record of appeal was served by email on 21/11/2025, after the matter had already been dismissed with costs for want of prosecution. He adds that the appellant gave no reason for the delay and that the appellant was indolent. He argues that the appellant’s failure to file the record of appeal timeously shows lack of interest in pursuing the appeal. He urges the court to dismiss the application with costs, or that the applicant be ordered to pay exemplary costs if the application is allowed.
9. The court has considered the application, the response to the application and the parties’ respective submissions. The key question to be determined in this ruling is whether the application satisfies the criteria for exercising the court’s discretionary jurisdiction to set aside a dismissal order and reinstate a suit.
10. Does the application meet the criteria for reinstatement of a suit dismissed for want of prosecution? The jurisdiction to reinstate a suit dismissed for want of prosecution is a discretionary one. The discretion is, however, exercised on the basis of well settled principles. The Court of Appeal for East



Africa in *Shah v Mbogo & another* 91967) EA 116 outlined the following general principle on exercise of discretionary jurisdiction.

“The discretion is intended so as to be exercised to avoid injustice or hardship resulting from in adventure or excusable mistake or error but is not designed to assist a person who has deliberately sought whether by evasion or otherwise to obstruct or delay the course of justice”

11. One of the policy considerations that guide our courts when exercising this discretionary jurisdiction is the need for expeditious disposal of cases. In *Mobile Kitale Service station v Mobil Oil Kenya Limited & another* [2004] eKLR the Court stated as follows:

“I must say that the courts are under a lot of pressure from backlogs and increased litigation, therefore it is in the interest of justice that litigation must be conducted expeditiously and efficiently so that injustice caused by delay would be a thing of the past. Justice would be better served if we dispose matters expeditiously. Therefore, I have no doubt the delay in the expeditious prosecution of this suit is due to the laxity, indifference and/or negligence of the plaintiff. That negligence, indifference, and/or laxity should not and cannot be placed at the doorsteps of the defendant. The consequences must be placed on their shoulders.”

12. This appeal was dismissed largely because counsel for the appellant erroneously informed the court that the appellant did not comply with the order issued by the court on 27/10/2025. Counsel subsequently established that the record of appeal was filed on the same day that the court granted the appellant an extension of 14 days (27/10/2025). The only aspect of non-compliance relates to service of the record of appeal. Counsel explained that there was an oversight on the part of this office and tendered an apology to the court and to the parties to the appeal.
13. Given the above circumstances, the court finds that a proper case has been made to warrant the exercise of the court’s discretionary jurisdiction to set aside the dismissal order and admit the appeal for hearing and determination on merits. However, for failure to serve the record of appeal within the stipulated time, the appellant will bear the respondent’s costs of the application, assessed at Kshs 15,000. The said costs shall be paid within 30 days. These are the orders of the court on the application dated 24/11/2025.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 27TH DAY OF JANUARY, 2026.

B M EBOSO [MR]

ELC JUDGE

In the Presence of:

Mr. Wakoko for the Appellant/Applicant

Mr. I. C. Mugo for the Respondents

Court Assistant – Nelly

