



**Mwangi v Tabo & another (Environment and Land Appeal  
E156 of 2024) [2026] KEELC 207 (KLR) (22 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 207 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL E156 OF 2024**

**JG KEMEI, J  
JANUARY 22, 2026**

**BETWEEN**

**PATRICK MAINA MWANGI ..... APPELLANT**

**AND**

**FRANCIS OTIRA TABO ..... 1<sup>ST</sup> RESPONDENT**

**ABUKAR YUSUF MAHAMUD ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This motion is brought under Sections 1A, 1B and 3A of the Civil Procedure Rules, Article 50 of the *Constitution*, and all other enabling provisions of the law, seeking, in the main, an order for the dismissal of the appeal.
2. The Applicant deponed that the appeal arises from the court's Ruling in BPRT No E531 of 2021. Aggrieved by the said ruling, the Applicant filed a memorandum of appeal on the same date, but in the Commercial Division of the High Court. However, on 15/10/24, the appeal was transferred to this court for hearing and determination of the jurisdictional questions.
3. That one year has since lapsed since the filing of the appeal, yet the appellant/respondent has taken no steps to file a record of appeal or to prosecute the appeal. He was of the view that, since the appellant has lost interest in the appeal, the ends of justice will be served if the appeal is dismissed. In addition, he stated that the appeal's continued existence causes financial and emotional distress when defending it.
4. The appellant did not oppose the application.
5. Having considered the application and the appellants' written submissions, the key issue for determination is whether the orders dismissing the appeal are merited.



6. The provision that deals with dismissal of appeals for want of prosecution is found in Order 42 Rule 35 of the Civil Procedure Rules which states as follows:

“ 35.

- (1) Unless within three months after the giving of directions under rule 13 the appeal shall have been set down for hearing by the appellant, the respondent shall be at liberty either to set down the appeal for hearing or to apply by summons for its dismissal for want of prosecution.
- (2) If, within one year after the service of the memorandum of appeal, the appeal shall not have been set down for hearing, the registrar shall on notice to the parties list the appeal before a judge in chambers for dismissal.”

7. In this case, the appeal was filed in 2021, and the same is yet to be prosecuted. I note that the record of appeal has not been filed. No reason has been advanced for the delay in prosecuting the appeal. The applicant asserts that despite several notices to the appellant to attend court, the appeal remains unprosecuted.

8. The court, when confronted with almost similar facts in the case *Protein & Fruits Processors Limited & Another vs. Diamond Trust Bank Kenya Limited* [2015] eKLR, Civil Appeal 9 of 2007, held that;

“Three years later the applicant is seeking dismissal of the appeal. It is not disputed that directions have not been given in this appeal, in my view the appeal cannot therefore be dismissed under Rule 35 (1) since the appeal has not be placed before the judge for direction. As it is, the appeal is incomplete and the Appellants have not furnished the court with the record of appeal. The only alternative the applicant is left with is under Rule 35(2) which requires the Deputy Registrar to list the appeal for dismissal by a Judge. In the current application the applicant is seeking an order that the Deputy Registrar be directed to list the appeal for dismissal before a judge in chamber. I have no reasons not to grant the prayer, the appeal hearing has been pending in court for six years and it is only fair if the matter can be finalised. In the circumstances of this matter I will not order the Deputy Registrar to place the file before a judge for dismissal; instead I will dismiss the appeal. This court has the inherent discretion to do so under Section 3A, to make such orders as may be necessary for the ends of justice or to prevent abuse of the court process. The court is also enjoined under Article 159(2) b of the *Constitution* to do so.

9. In the circumstances of this case, the court notes that the applicant stands to be prejudiced by the delay in the enjoyment of the orders in his favour and in the absence of any reason to the contrary, the appeal is fit to be dismissed under Section 3A, read together with the provisions of Article 159(2) of the *Constitution*.

10. Final orders for disposal

- a. Accordingly, the appeal be and is hereby dismissed with no orders as to costs
- b. The application dated the 23/10/25 be and is hereby allowed.

11. Orders accordingly.



**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22<sup>ND</sup> DAY OF JANUARY 2026  
THROUGH MICROSOFT TEAMS.**

**J G KEMEI**

**JUDGE**

Delivered in the presence of;

1. N/A for the Appellant
2. Ms Mwangi HB for Mr Abdullahi for the Respondents
3. C/A – Ms Yvette Njoroge

