



**Ndombi v Munuve (Environment and Land Appeal E070 of 2024)
[2026] KEELC 220 (KLR) (21 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 220 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E070 OF 2024**

**JG KEMEI, J
JANUARY 21, 2026**

BETWEEN

BONIFACE MUSYOKA NDOMBI APPELLANT

AND

JAMES MUTINDA MUNUVE RESPONDENT

RULING

[Notice of Motion dated 11/9/2025 filed by the Applicant]

1. Before the court is the application brought under Article 159 of *the Constitution*, sections 1A, 1B and 3A of the Civil Procedure Rules, and all other enabling provisions of the law, seeking orders to dismiss the instant appeal for want of prosecution and costs, and, in the alternative, the court may be pleased to issue such other orders as it may deem fit and just to grant.
2. James Mutinda Munuve, in his supporting affidavit of 11/9/25, swore that the appellant filed the memorandum of appeal on 22/5/24 and has failed to take steps to prosecute the same within the prescribed timelines. Neither has the appellant filed the record of appeal nor fixed the appeal for hearing for over one year, a delay that he considers unreasonable and prejudicial to him, as the continuous non-prosecution of the appeal denies him the enjoyment of the fruit of the Ruling delivered in BPRT No E030 of 2024, delivered on 19/4/24.
3. In addition, the deponent states that the appellant has never attended court despite being adequately represented by counsel. He opines that the appeal is therefore ripe for dismissal in the circumstances.
4. Despite service of the application upon the appellant, the appellant has not filed any response in opposition to the motion, so it is uncontroverted.
5. The court has considered the applicant's written submissions on record in this Ruling.
6. The key issue for determination is whether the application is merited.



7. 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.”

8. There are three ways in which an appeal may be dismissed. The above provisions provide that the appellant must set the appeal down for hearing within three months of the directions, in default of which the respondent may set the appeal down for hearing or apply for its dismissal. The second manner in which the appeal may be dismissed is that, if within one year after the service of the memorandum of appeal the appeal has not been set down for hearing by the other party, the Registrar shall, on notice, list the appeal for dismissal before a judge. An appeal may also be dismissed if the appellant does not appear when the appeal is called for hearing, provided that, if he appears subsequently and is able to prove that he was prevented from appearing in court by any sufficient cause when the matter was called for hearing, the court may readmit the appeal on terms or otherwise.

9. According to the record, the memorandum of appeal was filed on 22/5/2024. On 4/3/25, the Deputy Registrar of the court listed the appeal before the judge for directions. It is not disputed that the notice was duly served upon the appellant. On 6/5/25, the matter was placed before the judge for directions on appeal, but the parties were absent. On 30/7/25, the applicants/respondents undertook to move the court for the dismissal of the suit on the ground that the appellant had lost interest in the appeal. True to his word, the applicant moved this court through the instant application.

10. It is not in dispute that the court has not given directions in this instant appeal. That being the case, the court has noted that the appellant has neither attended court nor moved to prosecute the appeal for over one year. One may argue that, given the circumstances of this case, it was premature for the applicant to move the court for the dismissal of the appeal before directions are taken under Order 42 rule 35(1) of the Civil Procedure Rules. It is the appellant who triggers the court's process for giving directions. However, if the appellant sits on his laurels, should the appeal be left to hang over the head of the respondent and deny him the enjoyment of the fruits of his judgment? I think not.

11. 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

12. In the circumstances of this case, the court has considered, among other things, the prejudice the parties will suffer if the appeal remains unprosecuted. The court notes that, save for the trial court record, the appellant has yet to file the record of appeal. Of course, the applicant stands to be prejudiced by the delay in the enjoyment of the orders in his favour. Notwithstanding the prejudice, I find that the appeal cannot be dismissed at this stage. For the above reasons, I decline to dismiss the appeal but will give appropriate directions.
13. Final orders for disposal
 - a. Accordingly, I direct the appellant to set the appeal for hearing within the next 30 days, in default of which this appeal shall stand dismissed with costs to the Respondent in the appeal.
 - b. The application dated 11/9/25 is hereby dismissed in any event.
 - c. Each party to bear their costs.
14. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF JANUARY 2026 THROUGH MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered in the presence of;

Ms Kariuki HB for Mr Oketch for the Respondent

N/A for the Appellant

C/A – Ms Yvette Njoroge

