

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ELCA NO E011 OF 2024

HEZEKIAH KIMONDO

INDERITU.....PLAINTIFF

VERSUS

CHARLES MUCHERU

KINGORI.....DEFENDANT

RULING

The Respondent's Application dated 16/9/2025 seeks for orders that the Court dismisses the Application herein with costs for want of prosecution. I believe he meant Appeal and not Application. The reasons he advanced for his Application were that: -

The Appeal was filed on 6/5/2024 against the Ruling of Honourable E. Wanjala the Ruling having been delivered on 4/4/2024 in Engineer SPM ELC No. E014 of 2022 and that since the filing of the Record of Appeal on 6/5/2024 the matter has only come to Court for mention on 26/2/2025, 20th March, 2025, 5th June, 2025 and finally on 2/10/2025 without any meaningful progress and that suits once filed should be expeditiously disposed off without any undue delay. He also says that the pendency of the Appeal is

prejudicial to the Respondent and an abuse of the process of the Court.

In his Affidavit in Support, the Respondent says that the Appellant has failed to file the Record of Appeal. 1 year 4 months down the line of inaction, inertia and lethargy which is unexplained and inexcusable causes unnecessary and uncalled for anxiety, uncertainty and is astronomical expenses to the Respondent.

The Appellant never filed any response in opposition to the Respondent's Application for reasons not known to the Court.

It is true that the Appeal was filed in Court on 6/5/2024 the Ruling against which it is preferred having been delivered on 4/4/2024. I have the lower Court file with me where not only the Judgment is typed and certified but also are the Proceedings and it is not clear why the Appellant has not collected them and filed the Record of Appeal.

The proceedings were certified on 7/8/2024 just as the Ruling was. This was exactly 3 months 1 day after the Memorandum of Appeal had been filed. Since then, the matter was mentioned in this Court on 26/2/2025, more than seven months after the proceedings and Judgment had been certified.

The matter was then mentioned on 26/3/2025, 5/6/2025, 2/10,2025, 29/10/2025 and finally on 17/12/202. In all these occasions the Appellant has never attended Court nor his Advocate in spite of evidence that his Advocate has always been served and acknowledged receipt of the Mention Notices, and

more particularly service of the current Application and the subsequent Hearing Notices. And the service has always been timeously. This being the case, it is obvious that either the Appellant is not in touch with his Advocate for which he is partly to blame or that he has failed to heed to his Advocate's advice again at his own risk.

Accordingly, this Court cannot wait for him to decide when the Record of Appeal shall be prepared and filed in order for the Appeal to be heard. Engineer Senior Magistrate's Court has a record of timeously typing, printing and the preparing proceedings and Judgment and such effort must be rewarded by filing the Record of Appeal without delay. This Appeal is accordingly dismissed with costs.

Ruling Read and Delivered in Nyandarua this 5th Day of February 2025.

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: Samson.

N/A for the Plaintiff.

Mr. Karanja for the Defendant.

