

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MALINDI

CIVIL APPEAL NO. E044 OF 2022

PIETRO CANOBBIOAPPELLANT

VERSUS

MAURIZIO DALPIAZ.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

RULING

1. By an Application dated 17.7.24, the Appellant seeks the following orders:

1. *Spent.*
2. *THAT the Order of this Honourable Court made on 11th June, 2024 dismissing the Applicant's suit for non attendance be set aside and the Applicant be allowed to prosecute his case.*
3. *THAT this Honourable Court be pleased to reinstate the Applicant's case which was dismissed virtually on 11th June, 2024 for non attendance and the Applicant be allowed to prosecute his case.*
4. *THAT costs of this application be in the cause.*

2. The 1st Respondent opposed the Application *vide* his replying affidavit sworn on 11.11.24.

3. The Applicant claims that the matter herein was dismissed on 11.6.24 for non attendance.

4. The record shows that the Appellant filed its memorandum of appeal on 6.5.22 against the ruling dated 6.4.22 in Malindi CMCC No. 241 of 2016. The Appellant further filed an application dated 20.12.22, seeking stay of execution and of proceedings scheduled for 21.2.23. Directions were duly given for the filing of submissions on the said application. On 6.5.24, the Appellant was absent. Counsel for the 1st Respondent informed the Court that parties had filed submissions but that the application had been overtaken by events. The Court observed that the application which sought to forestall proceedings on 21.3.23 had indeed been overtaken by events and that there was no need to write a ruling. The Court proceeded to dismiss the application. The Court further stated that the Appellant was free to pursue any other application or appeal and scheduled a mention for 11.6.24.

5. On 11.6.24, there was no appearance for the Appellant. The Court issued a notice to show cause as the record of appeal had not been filed, and gave a mention dated for 10.7.24. Come the mention date and the Appellant stated that he still wished to pursue the matter. The Court

granted the Appellant 14 days ***“to file the application they wish to, failure to which the NTSC stands”***.

6. The Appellant filed the present application in which he seeks reinstatement of the suit which he says was dismissed on 11.6.24. A careful look at the record however shows that no order for dismissal of the suit was made. The Court issued a notice to show cause after it was informed that the record of appeal had not been served upon the Respondents.
7. In light of the foregoing, I find that the Application dated 17.7.24 which seeks to reinstate the “dismissed suit” is misguided. A simple perusal of the court record by the Appellant would have revealed the true status of the matter. Had he done so, he would no doubt not have filed the present Application, which has done nothing but waste the Court’s time and that of the 1st Respondent. The Application is dismissed with costs to the 1st Respondent.
8. The Court notes that since the appeal was filed on 5.5.22, the record of appeal is yet to be filed. The Appellant is directed to demonstrate interest in the appeal by filing and serving the record of appeal and submissions by 6.3.26. In default, the appeal shall stand dismissed with costs to the Respondent. Mention on 17.3.26 for compliance.

DATED, SIGNED and DELIVERED in MALINDI this 20th day of February 2026

M. THANDE
JUDGE