



**Muthuri v M'Mbui (Environment and Land Case E022 of 2025)  
[2026] KEELC 1371 (KLR) (5 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1371 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO  
ENVIRONMENT AND LAND CASE E022 OF 2025**

**JO MBOYA, J**

**MARCH 5, 2026**

**BETWEEN**

**PETER MURITHI MUTHURI ..... APPLICANT**

**AND**

**JOSEPH NTEERE M'MBUI ..... RESPONDENT**

**RULING**

1. The Appellant was aggrieved by the Judgement of Learned Trial Court [Hon. Lucy Mutai- C M] and the consequential decree arising therefrom. To this end, the Appellant/Applicant filed an appeal vide memorandum of appeal dated 30.08.2025.
2. The appeal was thereafter subject to taking of directions and whereupon the court directed the filing and service of the record of appeal within set timelines. The Appellant/Applicant failed to comply with the timelines. Thereafter, the court issued further directions on the 14.01.2026. The directions included a default clause, which was to stand activated in the event of default. The default clause related to the appeal standing dismissed for non-compliance.
3. The Appellant/Applicant failed to comply with the terms of the orders and directions of the court. Consequently, and in this regard, the appeal stood dismissed for non-compliance with the court orders.
4. The Appellant has now reverted to court. Same is seeking exercise of equitable discretion in his favour. The Appellant essentially seeks the setting aside of the dismissal orders. The Appellant requires the reinstatement of the appeal. The Applicant seeks to have the appeal heard and determined on merits.
5. Be that as it may, the circumstances underpinning the subject application reminds me of the dictum of Appaloo JA [as he then was] in the case of Philip Keipto Chemwolo & another v Augustine Kubende [1986] KECA 87 (KLR).



6. The learned Judge stated thus:

“I think a distinguished equity judge has said:

“Blunders will continue to be made from time to time and it does not follow that because a mistake has been made that a party should suffer the penalty of not having his case determined on its merits.”

I think the broad equity approach to this matter is that unless there is fraud or intention to overreach, there is no error or default that cannot be put right by payment of costs. The court, as is often said, exists for the purpose of deciding the rights of the parties and not for the purpose of imposing discipline. In this case, the appellants offered to pay the costs. The Respondent will not agree.”

7. Back to the application. Before me is the application dated the 04.02.2026 brought pursuant to the provisions of Order 42 Rule 21 of the Civil Procedure Rules; Sections 1A, 1B, 3A and 63 of the *Civil Procedure Act*, Chapter 21 Laws of Kenya; Section 19 of the *Environment and Land Court Act*; and Articles 48, 50 and 159 of *the Constitution* 2010. The reliefs sought are:

- i. The application be certified urgent and it be heard on the priority basis.
- ii. That the order of/directions made herein on 14.01.2026 pursuant to which the appeal herein stands dismissed and the subsequent order made on 04.02.2026, be varied or set aside, and the dismissed appeal herein be re-admitted on such terms as the court may deem fit to order or direct.
- iii. That costs of the application be in the cause.

8. The application is premised on various grounds that have been enumerated in the body thereof. The grounds include: The Appellant was aggrieved by the judgement of the trial court; the Appellant thereafter instructed counsel to file/lodge an appeal; the appeal was duly/timeously filed; the Appellant also filed an application for stay of execution; the application was duly allowed; the Appellant complied with the terms of the stay; and Appellant has been desirous to prosecute the appeal.

9. Moreover, it has been contended that despite having issued sufficient instructions to his previous counsel, the previous counsel failed to act or comply with the directions of the court; the failure to comply with the directions of the court was a mistake on the part of the counsel; the failure is regretted; the failure culminated into the dismissal of the appeal; the dismissal of the appeal has deprived the Appellant of the right to be heard; the Appellant ought not to be punished for the mistake of counsel; the appeal raises arguable points; and the Appellant is desirous to be heard.

10. The subject application is supported by the affidavit of Peter Murithi Muthuri [the Applicant] sworn on even date. The deponent has reiterated the grounds contained in the body of the application. In addition, the deponent has posited that the suit property lawfully belongs to him; and that the suit property is developed with 19 residential units. The applicant further avers that unless the appeal is reinstated, same shall be subject to undue prejudice and grave injustice.

11. Flowing from the foregoing, the Appellant/Applicant has invited the court to find and hold that the circumstances leading to the dismissal of the appeal, are excusable. The court has been implored to exercise discretion and set aside the dismissal orders. Moreover, the court has been invited to restore the appeal for hearing and determination on merits.



12. The Respondent filed a replying affidavit sworn on the 20.02.2026 and wherein the Respondent has raised various issues. The issues canvassed are: The Appellant was afforded indulgence by the court; the Appellant failed to appropriate the indulgence; the Appellant has been guilty of negligence and slovenly conduct; the Appellant failed to comply with the directions of the court; non-compliance with court orders attracts penal consequences; the Appellant has not established sufficient cause; and the application is devoid of merits.
13. The subject application came up for directions on the 23.02.2026 and whereupon the advocate[s] for the parties covenanted to canvass the application by way of written submissions. The court thereafter, adopted the terms of the agreement and issued directions. The directions of the court were: the application shall be canvassed by way of written submissions; the applicant shall file and serve written submissions within 7 days from the date of the directions; and the Respondents shall file written submissions within 7 days from the date of service.
14. The Appellant filed written submissions dated the 03.03.2026. The Appellant has highlighted three [3] key issues. The issues are: The applicant has demonstrated/established sufficient cause; the applicant shall suffer undue prejudice and grave injustice; and the applicant deserves the discretion of the court. To this end, the court has been invited to exercise discretion in favour of the Appellant and to reinstate the appeal for hearing and determination on merits.
15. The Respondent filed written submissions dated the 02.03.2026 and wherein the Respondent has canvassed three [3] key issues. The issues are: the Appellant failed to comply with the directions of the court; the conduct of the Appellant constitute[s] negligence/want of diligence; and the Respondents shall suffer prejudice; if the appeal is reinstated. The Respondent has thereby implored the court to invoke and deploy the principle of finality and to avert further injustice arising from prolonged hearing.
16. Having reviewed the notice of motion application dated the 04.02.2026; the supporting affidavit thereto; the replying affidavit in opposition thereto; and the written submissions filed by/on behalf of the parties, I come to the conclusion that the subject application turns on two [2] key issues. The issues are: Whether the applicant has established sufficient cause; and whether the applicant shall be disposed to suffer undue prejudice or grave injustice or otherwise.
17. With respect to the first issue, it is imperative to highlight that that the Appellant filed the subject appeal promptly and timeously. In addition, the Appellant also filed an application for stay of execution pending the hearing and determination of the appeal. It suffices to state that the application for stay was heard and allowed. In particular, the court directed that the Appellant deposits the sum of Kshs. 200,000/= only on account of security.
18. The Appellant duly complied. Notably, the Appellant deposited the sum of Kshs. 200,000/= only with the Deputy Registrar of the court. The deposits of the said security constituted a demonstration that that Appellant was indeed keen to pursue the hearing and determination of the appeal. For good measure, the Appellant herein would not have deposited the said security if same, did not have faith in his appeal.
19. Fast forward, the Appellant contends that he instructed his previous advocates to abide by the directions of the court including filing of the record of appeal. However, the appellant posits that his previous counsel failed/neglected to comply.
20. Moreover, the Appellant has averred that the he made concerted efforts to follow up with his previous counsel. The Appellant posits that his endeavors were in vain.



21. To my mind, the Appellant herein has submitted that the non-compliance with the directions and orders of the court was occasioned by his previous counsel. The Appellant implores the court not to visit the infractions and negligence of his advocate upon him. On the contrary, the Appellant invites the court to excuse the mistake[s], error, negligence or inaction of his counsel.
22. I have reviewed the contents of the supporting affidavit. The Appellant has explained in great details the efforts that same took to ensure that the directions of the court were complied with. Quite clearly, the Appellant exhibited due diligence and keen attention to have the appeal progressed. It is the appellant's previous counsel, who failed the appellant.
23. Additionally, it is important to highlight that the Appellant herein moved the court without unreasonable or undue delay. The appeal stood dismissed for non-compliance with the court orders. In particular, the dismissal orders were endorsed on the court record on the 04.02.2026. However, the same day, the Appellant filed the subject application. Instructively, the application was filed on the same date of the dismissal. To my mind, the conduct exhibits and demonstrate[s] pro-active measures by / on behalf of the appellant.
24. In the premises, and taking into account the totality of the evidence on record, I come to the conclusion that the Appellant has established/demonstrated sufficient cause. For good measure, the Appellant has shown good faith, and a genuine desire to be heard. Simply put, the Applicant has established sufficient cause.
25. What constitutes sufficient cause was expounded upon in the case of Wachira Karani v Bildad Wachira [2016] KEHC 6334 (KLR). The court [per Mativo Judge – as he then was] stated thus:

I again repeat the question what does the phrase "Sufficient cause" mean. The Supreme Court of India in the case of Parimal vs Veena observed that:-

"sufficient cause" is an expression which has been used in large number of statutes. The meaning of the word "sufficient" is "adequate" or "enough", in as much as may be necessary to answer the purpose intended. Therefore the word "sufficient" embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the view point of a reasonable standard of a curious man. In this context, "sufficient cause" means that party had not acted in a negligent manner or there was want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been "not acting diligently" or "remaining inactive." However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously"

The court in the above case added that while deciding whether there is a sufficient cause or not, the court must bear in mind the object of doing substantial justice to all the parties concerned and that the technicalities of the law should not prevent the court from doing substantial justice and doing away with the illegality perpetuated on the basis of the judgement impugned before it.

(13) The test to be applied is whether the defendant honestly and sincerely intended to remain present when the suit was called for hearing. Sufficient cause is thus the cause for which the defendant could not be blamed for his absence. Sufficient cause is a question of fact and the court has to exercise its discretion in the varied and special circumstances in the case at hand. There cannot be a straight-jacket formula of universal application



(14) Thus, the defendant must demonstrate”

26. The next issue for consideration is whether the applicant shall suffer prejudice or grave injustice. The Appellant has posited that the suit property is developed. In particular, the applicant has averred that he constructed 19 residential units on the suit property. Moreover, it has been contended that 18 of the said units are currently occupied by tenants.
27. What I hear the Appellant to be stating is to the effect that unless the appeal is reinstated and thereafter determined on merits, same shall stand deprived of his developments undertaken on suit property without a hearing. The Appellant also posits that unless the orders sought are granted, same shall be driven away from the seat of justice.
28. On the contrary the Respondent has also contended that the reinstatement of the appeal shall occasion prejudice unto him. According to the Respondent, the prejudice to be suffered relates to prolonged delay in the hearing and effectual determination of the appeal. The Respondent has thereafter invoked the principle of finality.
29. I have considered the rival submissions. I take the following position. The dispute before the court touches on and concerns land. Issues pertaining to land are no doubt emotive and sensitive. Such issues ought to be heard and determined on merits, unless there exist exceptional and compelling reasons to the contrary. In this case, I have not discerned any exceptional reason to bar the determination of the appeal on merit[s].
30. Before concluding on this issue, I beg to reference the observation of the Court of Appeal in the case of Chief Land Registrar & 5 others v Koech & 3 others [2018] KECA 27 (KLR). The Court of Appeal highlighted the sensitivity of land matters and thus the need to address same on merits. The court stated thus:

Land ownership and land rights is both a historical and emotive subject in Kenya. A right to hold property is a constitutional right as well as a human right and no person can be deprived of his property except in accordance with the provisions of *the Constitution* or Statute. The condition precedent to taking away anyone's property is that the authority must ensure compliance with *the Constitution* and Statutory provisions.
31. Bearing the foregoing in mind, and taking into account the dictum of Appaloo JA [as he then was] in the case of Philip Keipto Chemwolo & another v Augustine Kubende [1986] KECA 87 (KLR), I come to the conclusion that the Appellant shall be disposed to suffer undue prejudice and indeed grave injustice.
32. Additionally, the default leading to the dismissal of the appeal ought not to be elevated to the level of a criminal offence. Moreover, the Appellant must not be subjected to punishment and discipline, merely because of the slovenly conduct of his erstwhile Advocate. In any event, it is lost on me that the Appellant remained vigilant; and cannot be said to have gone into slumber. Moreover, there is no gainsaying that courts of law do not exist to mete out punishment.
33. On the contrary, a court of law exist[s] to administer justice. Moreover, it behooves the court to endeavor to hear and determine disputes on merits, unless there exist exceptional and compelling circumstances. In addition, this court is called upon to rise above procedural technicalities and lapses and thereafter facilitate the realization of the right of access to justice. [See Articles 48 and 159 [2] [d] of *the Constitution*, 2010].



## **Conclusion**

34. The Appellant herein sought to partake of the equitable discretion of the court. In his desire, the Appellant explained the circumstances leading to the dismissal of the appeal. The court has reviewed the explanation. The court is satisfied with the bona fides of the explanation. In any event, there is no gain saying that the Appellant moved the court without undue delay.

## **Final Orders**

35. Flowing from the foregoing analysis, the final orders that commend themselves to the court are:
- i. The Application dated 04.02.2026 be and is hereby allowed.
  - ii. The Orders of 04.02.2026 dismissing the appeal for want of prosecution be and are hereby set aside.
  - iii. The Appeal be and is hereby reinstated for hearing and determination on merits.
  - iv. The Appellant shall file and serve the record of appeal within 14 days from the date hereof.
  - v. The Appeal shall listed/ Fixed for directions in accordance the provisions of order 42, Rule 13 of the Civil Procedure Rules on Priority basis.
  - vi. The Appellant shall pay thrown away cost of Kshs. 15,000 /= only to the Respondent.
  - vii. The Costs in terms of clause [vi] shall be paid within 14 days from the date hereof.
  - viii. In default to comply with clause [vii] above, the Respondent shall be at liberty to execute.
36. It is so ordered.

**DATED, SIGNED AND DELIVERED AT ISIOLO THIS 5<sup>TH</sup> DAY OF MARCH, 2026**

**OGUTTU MBOYA FCIarb ;CPM [MTI- EA]**

**JUDGE**

In presence of:

Mukami: Court Assistant

Mr. Makomere holding brief for Mr. Carl Peters Mbabu for the Appellant/Applicant

N/A for the Respondent.

