



**Wanyonyi & another v Kenya Women Microfinance Bank Ltd (Civil Appeal  
82 of 2021) [2026] KEHC 2598 (KLR) (19 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2598 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CIVIL APPEAL 82 OF 2021  
REA OUGO, J  
FEBRUARY 19, 2026**

**BETWEEN**

**SHABAN MUNYASIA WANYONYI ..... 1<sup>ST</sup> APPELLANT**

**NELLIE STAYCIE ISAVWA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**KENYA WOMEN MICROFINANCE BANK LTD ..... RESPONDENT**

**RULING**

1. The applicant in this matter is seeking the following orders; that the honourable Court set aside, vacate and/or vary the dismissal of the appeal and reinstate it for hearing, and that costs be awarded in the outcome of the Appeal.
2. The application is supported by the affidavit of the applicant, Nelly Staycie Isavwa, the 2nd appellant/applicant, and by 7 grounds set out in the face of the application. She deposes that she was infected with coronavirus and other chronic illnesses, which hospitalised her from 2021 to 2025, thereby causing her to lose contact with her counsel. These chronic illnesses led to inaction in prosecuting the appeal, and therefore the delay and failure to conclude the appeal were not deliberate or intentional. She is serious about prosecuting the appeal on merit and conclusion. The record of appeal and the proceedings have been compiled and are ready for filing. The appeal raises serious issues that may occasion injustice if not heard on merit. There has not been a delay in bringing the application, as she moved upon completion of her prolonged treatment.
3. The application was opposed. Kenya Women Microfinance Bank Ltd filed grounds of opposition as stated below:
  - i. That the Applicant has failed to prove a satisfactory or reasonable explanation for the inordinate delay in bringing the present application for reinstatement, and such delay is prejudicial to the Respondent



- ii. That the Applicant has not demonstrated sufficient cause or any justifiable reason for the failure to prosecute the suit within a reasonable period prior to its dismissal.
  - iii. That the reinstatement of the suit would cause undue prejudice to the Respondent, who has been subjected to prolonged uncertainty and potential injustice due to the Applicant's indolence.
  - iv. That it is in the interest of justice and the overriding objective of the court to bring litigation to an end, and to prevent the reopening of suits where parties have failed to act with due diligence.
  - v. That in the circumstances and based on the foregoing reasons the application herein is baseless, misconceived and a clear abuse of court process therefore it is in the interest of justice that the orders sought therein be declined and the application be dismissed with costs.
4. The 1st Respondent also filed a replying affidavit, challenging the appellants' averments, putting the applicants to strict proof, and stating that the delay and failure to conclude the appeal against the 2nd Appellant were deliberate acts of faith and an abuse of the court process bordering on contempt.
  5. The application was heard in court on 4.11.2025. The respondent was not present. The applicant argued the application, and her counsel relied on her affidavit in support and emphasised the ground that she was unwell. The respondent did not set out the grounds of opposition.

### **Determination**

6. I have carefully perused the court file and find as follows. The appellants filed their memorandum of appeal on 21.12.2021. On 4.3.2022, the applicants filed an application for a stay of execution, sale and/or public auction or advertisement of the suit parcel number E.Bukusu/N.Kanduyi, pending the hearing of the application. Justice Kemei heard the application and delivered a ruling on 19.5.2022. The applicants were granted orders restraining the 1st respondent from exercising its power of sale of the suit property, and the proceedings before the trial court in Bungoma CMCC No. 452 of 2018 were stayed pending the hearing and determination of the appeal. The appellants were also directed to set down the appeal for hearing on a priority basis and to conclude it within ninety (90) days from the date of the ruling.
7. A perusal of the court file indicates that the appellants' counsel was served with a Notice to Show Cause dated 20.12, which was set down for hearing on 31.1.2025. The parties failed to attend to the Notice, and this court dismissed the suit for want of prosecution.
8. The respondent did not move the court. On its own motion, the court served the appellant with the Notice to Show Cause Order, which was the proper course of action, as none of the parties had moved the court since 19.5.2022.
9. Courts have set out the factors to be taken into account when considering whether a suit should be reinstated. In *Ivita v Kyumbu* [1984] KLR 441, Chesoni, J stated that the considerations included whether the delay was prolonged and inexcusable; whether justice could be done despite the delay; whether justice is for both sides, so the positions of both sides must be considered; whether the other side would be prejudiced by the prolonged delay; and the reasons given for the delay.
10. The 2nd appellant's plea is to reinstate the appeal on the basis that she was indisposed after contracting coronavirus. She has attached a medical record showing that she was in hospital in March 2021, and a discharge summary showing she was discharged on the 25th March 2021. Although she claims she was in hospital between 2021 and 2025, her documents do not sufficiently support this statement. I also note that the application was brought four months after the order dismissing the appeal. This is



a court of justice, and it may exercise its discretion to grant or refuse the reinstatement of a suit (see *John Nahashon Mwangi v Kenya Finance Bank Limited (in Liquidation)* [2015] eKLR [2015] KEHC 6789 (KLR)). No prejudice will be caused to the Respondent.

11. The subject matter of this appeal concerns the Respondent's right to exercise its statutory right to dispose of the appellant's property. Land is an emotive issue in Kenya. I will give the appellant the benefit of the doubt and allow her to proceed with her appeal.
12. I therefore set aside the order dated 31.1.2025 and reinstate the appeal for hearing. The appellants/ applicants shall file their Record of Appeal within 21 days; in default, the appeal shall stand dismissed. Costs to be in the outcome of the appeal.

**DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 19<sup>TH</sup> DAY OF FEBRUARY 2026.**

**R.E.OUGO**

**JUDGE**

In the presence of:

Mr.Olonyi h/b Sichangi - For the Appellants/ Applicants

Respondent - Absent

Wilkister - C/A

