



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
CIVIL APPEAL NO. 39 OF 2019

GREAT RIFT EXPRESS SHUTTLE.....APPELLANT

VERSUS

STEPHEN KARANJA MUNGAI & JACKLINE WAMBUI

(Suing as the legal representatives of the estate

of the late PETER GICHUKI

KARANJA).....RESPONDENT

RULING

1. Before me is a Notice of Motion Application dated 19th day of November, 2025 filed pursuant to Order 17 Rule (2) 3 and Order 51 Rule 1 of the Civil Procedure Rules 2010 and Section 3 and 3A of the Civil Procedure Act and all other enabling provisions of the Law.
2. The Respondent/Applicant craves from the Court for following Orders: -
 - i. That, the Court be pleased to dismiss the instant appeal for want of prosecution,*
 - ii. That, Costs of this application be borne by the Appellant/Respondent.*

3. The Application is based on the following five grounds and sworn affidavit of **Mongare Gekonga** Advocate that;

a) A period of six (6) years have lapsed since the appeal herein was filed.

b) The Appellant has lost conceivable Interest in the appeal.

c) The continued pendency of the appeal herein unprosecuted has been prejudicial and vexatious to the Respondent/Applicant.

d) In principle and in the wider interest of justice, the appeal herein should be dismissed for want of prosecution.

e) It is a policy and practice much cherished and espoused by this Court, that appeals have to be expeditiously disposed of without undue delay.

4. Having considered the submissions, the affidavits, the only issues for determination are;

a. whether this appeal ought to be dismissed for want of prosecution?

b. who is to bear costs?

5. **Order 17, rule 2 (1)** of the Civil Procedure Rules provides as follows;

1) In any suit in which no application has been made or step taken by either party for one year, the Court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.

- 2) *If cause is shown to the satisfaction of the Court it may make such orders as it thinks fit to obtain expeditious hearing of the suit.*
- 3) *Any party to the suit may apply for its dismissal as provided in sub-rule 1.*
- 4) *The Court may dismiss the suit for non-compliance with any direction given under this Order.*
- 5) *A suit stands dismissed after two years where no step has been undertaken.*
- 6) *A party may apply to Court after dismissal of a suit under this Order.*

6. The appellants rely on **Order 42 rule 35**. Dismissal for want of prosecution which states;

- a. *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.*
- b. *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.*

7. This Appeal was first dismissed for want of prosecution on the 25th January 2023 and thereafter reinstated on 22nd September 2023 on

conditions upon the Appellant to cause the Appeal to be set-down for admission and hearing,

8. The Appellant once again went into a slumber failing to comply save for a solo letter dated 11th February 2025 addressed to the Deputy Registrar seeking for a mention on unspecified reason. Filing of letters on the CTS cannot assure action, a letter must be stamped as received by the Court for evidential worthiness to be accorded on the same. In this instance no action was taken on the Appeal from 11th February to the 27th November when the Court Gave directions on hearing and disposal of the 2nd Application for dismissal of the Appeal for want of prosecution.
9. The Court have considered the Return of Service by **Mongare Gekonga** Advocate Dated 26th November 2025 noting that the Respondents were duly served but failed to make any representation.
10. The Respondents have failed to show cause as to why the Appeal that was filed almost seven (7) years ago has never been set-down for admission and hearing.
11. This Court is persuaded that the Appeal merits dismissal and thus allow the Application dated 19th day of November, 2025.
12. The Appellant was allowed a second bite of the cherry when the Appeal was reinstated but wasted the opportunity for two more years triggering the instant Application.
13. The Appeal is accordingly dismissed.

14. Costs of the Application shall be granted to the Respondent/Applicant.

It is so Ordered

Delivered, Dated and signed at Nakuru

On this 16th day of March, 2026

Mohochi S.M.

JUDGE