



REPUBLIC OF KENYA



KENYA LAW
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**Mbuli v Mung'eru (Civil Appeal E081 of 2024)
[2026] KEHC 3302 (KLR) (11 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3302 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL E081 OF 2024**

G MUTAI, J

MARCH 11, 2026

BETWEEN

OMAR MBULI APPELLANT

AND

AMOS NZUKI MUNG'ERU RESPONDENT

RULING

1. This appeal was filed on 22nd March 2024. The appellant filed a memorandum of appeal dated 19th March 2024.
2. The respondent applicant filed a notice of motion dated 3rd July 2024, seeking to have the appeal dismissed as, in his view, it was a delay of justice. The application was dismissed by Nga'ringa'r J. He considered the application and, in a terse ruling delivered on 4th February 2025, dismissed it for being devoid of merit.
3. Not deterred by the said setback, the respondent filed the application before the court. The same purports to be a petition. It is dated 2nd April 2025 and seeks the dismissal of the appeal, the reinstatement of the lower court's ruling, and costs.
4. In response, the appellant filed grounds of opposition dated 1st October 2025 in which he deprecated the form of the petition, averring that the respondent should have filed a notice of motion rather than a petition. He further stated that the orders sought cannot be issued through such a petition. The appellant prayed that the petition be dismissed with costs.
5. I have considered the "petition" and the response thereto. The form of the application notwithstanding, it would appear to me that the respondent/applicant is aggrieved by the want of prosecution of the appeal despite the fact that it was filed over 2 years ago. This court is called upon to do justice without undue delay.



6. The appellant has stated in the past that he couldn't get proceedings. That appears unlikely. 2 years is a very long period for the Small Claims Court's proceedings to be made available to a party appealing its decision. The said Court is ordinarily fleet of foot. A more likely explanation is that there hasn't been a follow-up. In the circumstances, I am inclined to issue an order that would serve the interest of justice. I therefore:
 1. Order that the appellant file a record of appeal within 30 days of the date hereof. In default, the appeal will stand dismissed; and
 2. I further order that if the appeal is filed within 30 days, the matter be mentioned on 15th April 2026 before Lady Justice Florence Wangari for directions on its disposal.
7. Costs of the application shall be in the appeal.
8. It is so ordered.

DATED AND SIGNED AT MOMBASA, THIS 11TH DAY OF MARCH 2026. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:

Ms Nyaga for the Appellant;

Mr Mung'eru for the Respondent /Applicant; and

Ms Bancy - Court Assistant.

