



**Coast Bus Mombasa Limited v Ombima (Civil Miscellaneous Application
E039 of 2024) [2026] KEHC 4224 (KLR) (27 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4224 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL MISCELLANEOUS APPLICATION E039 OF 2024**

**GL NZIOKA, J
MARCH 27, 2026**

BETWEEN

COAST BUS MOMBASA LIMITED APPLICANT

AND

ELISHA ENZOGA OMBIMA RESPONDENT

RULING

1. By a notice of motion application dated 21st May 2024 and amended on 15th July 2024 brought under the provisions of; section 1A, 1B and 3A and 94, 95 of the *Civil Procedure Act* (Cap 21) Laws of Kenya, Order 45 Rule 1, Order 42 Rule 21 and Order Order 50 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules 2010 and all enabling provisions of the law, the applicant is for the following orders:
 - a. Spent
 - b. That this Honorable court be pleased to grant an order of stay of execution of the judgment delivered on 23rd March 2023 by the Honorable Barasa and all consequential orders arising therefrom pending the hearing and determination of this application inter parties.
 - c. That this Honorable court be pleased to grant an order of stay of execution of the judgment delivered on 23rd March 2023 and all consequential orders arising therefrom pending the hearing and determination of the appeal.
 - d. That this Honorable court be pleased to reinstate the applicant's appeal being, High Court Appeal No. 031 of 2021 which was dismissed on 30th April 2024.
 - e. That this Honorable court be pleased to issue any other order it may deem just, appropriate and expedient in the interest of justice
 - f. That the costs of this application be in the cause.



2. The application is supported by the grounds thereto and the affidavits sworn by Juliana W Kingori an Advocate of the High Court of Kenya practising in the firm of Kimondo Gachoka and Co. advocates who have conduct of this matter.
3. It is averred that HCCA No. 031 of 2023 emanates from the judgment of Honorable Barasa in Engineer CMCC is E061 of 2022 which was delivered on 22nd March 2023. That the applicant filed a record of appeal and submissions for purposes of hearing and determining the appeal.
4. That on 21st May 2024, the Advocate requested Ms. Mwira, an Advocate to hold her brief. That she was informed that the matter was coming up for judgment where terms were recorded as follows:
 - a. Liability-----50: 50%
 - b. general damages---Kshs. 400,000
 - c. special damages----Kshs. 8,040
5. That upon receiving the said orders, the Advocate immediately instructed the legal clerk to extract a copy of the judgment but the legal clerk was notified that the registry denied having a judgment in the said case in the above stated terms and they proceeded to peruse the court file where they learned that unlike the orders they had received from the counsel the matter was dismissed for want of prosecution on 30th April 2024.
6. That by dismissing the appeal the appellant is exposed to execution proceedings from the respondent and that the mistake to prosecute the appeal was inadvertent which ought not to prevent the hearing and determination of the appeal. Further the mistake should not be visited upon innocent litigant.
7. That prior to dismissal the appellant had filed submissions on 12th December 2023 and therefore it is only fair and in the interest of justice that this matter be reinstated and the applicant be given a chance.
8. However, the application was opposed vide a replying affidavit dated 5th December 2024, sworn by Elisha Enzoga Ombima, wherein it is acknowledged the respondent is aware that the suit in Engineer court arose out of a road traffic accident on 13th February 2022. That this matter formed part of a series of files wherein Engineer CMCC E059 of 2022 was selected as the lead file for purposes of determining liability.
9. That the matter was heard on 25th January 2023, wherein he gave his evidence in court and judgment delivered on 22nd March 2023. That after judgment was delivered, the applicant was dissatisfied in terms of the judgment and preferred an appeal. That the appellant failed to prosecute the appeal and it was slated for notice to show cause on 9th April 2024 but the applicant failed to attend court and notice was further extended to 30th April 2024.
10. That the court's directions were brought to the knowledge of applicant but they were not keen in prosecuting this appeal and further on 30th April 2024, the applicant having failed to attend court, the appeal was dismissed for want of prosecution.
11. That the applicant has not demonstrated any sufficient grounds on why they failed to attend court when this matter came up to show cause on 9th and 30th April 2024, and dismissed. Further, they never moved the court until 15th July 2024 when the present application was filed to reinstate the appeal and only after the respondent sought for the court file to be released for purposes of execution.
12. That the applicant's supporting affidavit is false and made in bad faith as they moved the court only when they were prompted. That the appellant filed submissions in this matter even before the appeal



was admitted for hearing and before confirming the record of appeal was complete. Further, they have not even complied with the conditions for stay of execution.

13. That there is apparent laxity on the part of the appellant to prosecute the matter. That the instant application lacks merit as it denies him the fruits of his judgment and therefore it is only fair that the application be dismissed with costs. Further the applicants are not entitled to the discretion of the court and that he will be grossly prejudiced.
14. The entire matter herein rest on the conduct of the High Court Civil Appeal No. E031 of 2023. Notably, the memorandum of appeal therein was filed in court on 25th April 2023. The matter was placed before the court and on 4th May 2023, when the court ordered that a complete record of appeal be filed within thirty (30) days.
15. However, by 3rd July 2023, the record had not been filed and the appellant was given a further thirty (30) days. On 18th October 2023 the record of appeal was admitted to hearing and the parties directed to appear before the Honorable Deputy Registrar to confirm the record of appeal was complete.
16. On 7th December 2023 it was noted the record was not complete and a supplementary record of appeal was supposed to be filed and matter stood over to 23rd January 2024. On that date there were no parties in court and the court ordered for a notice to show cause to issue.
17. On 9th April 2024 the supplementary record of appeal had not been filed and the court ordered that the supplemental record of appeal be filed before 12th April 2024 and that the parties to file submissions with the matter stood over to 30th April 2024 but on that date the appellant was not in court though having been served.
18. Further, the supplementary record of appeal had not been uploaded. The respondent applied for the matter to be dismissed for lack of interest and the matter was dismissed on 30th April 2024. However, this application was not filed until May 2024. Even then although the appellant alleges that there are submissions on this court file there are no submissions on the court file.
19. To revert back to the matter herein, reinstatement of a dismissed matter is a discretionary power exercised by courts, primarily governed by Order 12 Rule 7 and Order 42 Rule 21 of the Civil Procedure Rules 2010. The applicant must demonstrate "sufficient cause" for their non-appearance, proving the absence was not due to a deliberate attempt to delay justice.
20. The applicant has been indolent in prosecuting the appeal and was properly dismissed. However, it clear that the delay was occasioned by applicant's counsel and to deny the applicant an opportunity to prosecute the matter will be unjust, unfair and prejudicial.
21. Be that as it may, if the applicant has not met the stay condition the respondent should proceed with execution. In the meantime the application is allowed on condition that the applicant sets down matter for hearing within fourteen (14) days of the date of this order. Failure of which the appeal will deemed dismissed without further recourse to court. Costs of the application are awarded to the respondent.
22. It is so ordered.

DATED, DELIVERED AND SIGNED ON THIS 27TH DAY OF MARCH 2026

GRACE L. NZIOKA

JUDGE

In the presence of:



No appearance for the applicant
Ms Kiberenge for the respondent
Hannah Court Assistant

