



**Kangethe & another v Kenya Wildlife Services & another (Civil Appeal
5 of 2020) [2026] KEHC 3879 (KLR) (18 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3879 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL APPEAL 5 OF 2020
GL NZIOKA, J
MARCH 18, 2026**

BETWEEN

WANGARI KANGETHE 1ST APPLICANT

PAUL MUHIA WANGARI 2ND APPLICANT

AND

KENYA WILDLIFE SERVICES 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

RULING

1. By a Notice of Motion Application dated 20th June 2024, brought under the provision of; Order 12 Rule 7, 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, the applicant is seeking for an order that; the Honorable Court be pleased to set aside orders of 16th March 2023, dismissing the appellant's appeal herein for want of prosecution and reinstate the same and allow the appeal to be heard and determined on merit.
2. The application is based on the grounds that:
 - a. The Honorable Court has wide and unfettered discretion to set orders aside when justice so demands.
 - b. The applicant is bound to suffer irreparably unless the order herein is set aside as he will be condemned unheard and contrary to the rules of natural justice.
 - c. The Respondent will not suffer any prejudice beyond the scope of costs if the matter herein is reinstated, heard and determined on merit.
3. That in the circumstances, it is only fair and just that the order dismissing the appeal for want of prosecution be set aside and the matter herein be admitted to hearing and determined on merit.



4. The application is also supported by an affidavit sworn by Paul Muhia Wangari who states that he instructed his advocate to file a suit against the respondent on behalf of the legal representatives of the estate of the late Michael Wangari Nganga for the fatal injuries he sustained as a result of a road traffic accident that occurred on 28th May 2010.
5. That he is aware the matter came up for hearing on various dates and he testified called his witnesses and then the trial court delivered judgment on 21st January 2020. That it took time for proceedings to be typed hence the delay in prosecuting the appeal.
6. However, a complete record of appeal was prepared on 15th June 2022 and filed and served upon the respondents on 11th August 2022 and 23rd August 2022, respectively. Further the court issued directions on 1st November 2022 but his advocate's clerk misfiled the said notice hence his advocate on record failed to attend court on 16th March 2023 when the matter was coming up for mention for directions.
7. That he is aware the court issued a notice to show cause indicating that the matter will be mentioned on 15th March 2023 and they joined the court on that date, but the matter was not cause listed and not mentioned.
8. He avers that it is only after they perused the court file that they discovered the matter had been dismissed on 16th March 2023 for want of prosecution. That they are willing to expedite the hearing of the matter and rely on the grounds afore and seek that the court allows him to prosecute the matter. Finally, that the application is made in good faith and without unduly delay.
9. However, the application was opposed, vide a replying affidavit dated 10th March 2025, sworn by Jenipher Catherine Ombonya, an Advocate of the High Court, practicing in the name and style of Ombonya and Company Advocate.
10. She avers that she seized of the facts and conduct of the appeal on behalf of the 1st respondent, hence authority to swear the replying affidavit. That she avers that there is unexplained inordinate delay in prosecuting the appeal.
11. That the subject of the appeal is a human life conflict and not a road traffic accident, as deposed in paragraph 2 of the supporting affidavit and that the cause of action arose on or about 28th May 2020, 15 years ago.
12. That the case was filed in the subordinate court on 3rd October 2014, out of the prescribed time under Limitation of Actions Act (Cap 22) of Laws of Kenya and remained in the lower court for six (6) years up to 16th January 2022, when judgment was delivered.
13. That pursuant thereto, Kenya Wildlife Service settled the decree to vide cheque number 027097 for Kshs 839, 838 which was transmitted to the appellant's lawyer on 13th March 2020. The appellant/applicant cannot approbate and reprobate at the same time.
14. That the record of appeal dated 4th June 2022 is incomplete for lack of typed and certified proceedings as well as decree emanating from the judgment. Further no evidence has been availed of payment of court fees for the proceedings and the decree.
15. That in the light of the aforesaid the appeal is not merited and should be dismissed.
16. The application is considered in the light of the materials before court. It is noted that the appeal was admitted to hearing on 1st November 2022. The court gave each party 30 days to file and serve the submissions and stood over the matter to 6th March 2023.



17. On that date, none of the parties were in court and the matter was stood over to 16th March 2023. Again, there were no parties in court and the matter was dismissed. The subject notice of motion application was filed.
18. It is clear from what the history of this matter that, it has been in court for a very long time. It is further clear that the appellant has not been vigilant in prosecuting this matter and/or the reasons given are not tenable.
19. However, in the interest of justice and taking into account that are quite a number of issues raised in the replying affidavit that call for evidence to be adduced to establish whether there is any appeal in the first place or not.
20. Consequently, I will allow this appeal to proceed to full hearing by setting aside the order that dismissed it, but award the respondent through a way cost of Kshs 10,000 as compensation for the inconvenience that has been caused by inordinate prosecution of this matter.
21. To further facilitate expeditious disposal of this matter, I direct that the parties herein comply with the orders the court gave by filing their respective submissions within 14 days of the date of this order for the appellant and 14 days after service for the respondent
22. In view of the alleged incomplete record the parties appear before the Hon. Deputy Registrar on 23rd March, 2026, to confirm the record of appeal is complete. The matter will come for mention on a date that will be fixed in court.
23. Those then are the orders of the court.

DATED, DELIVERED AND SIGNED ON THIS 18TH DAY OF MARCH, 2026

GRACE L. NZIOKA

JUDGE

In the presence of:-

Ms Kiberenge for the appellant/applicant

Mrs. Wachira for the 1st respondent

Ms. Hannah: court assistant

