



**Kamuri v Kihuria & another (Suing for and on behalf of Shangali
Baba na Mama Self Help Group) (Environment and Land Appeal
E027 of 2021) [2026] KEELC 2343 (KLR) (28 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2343 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND APPEAL E027 OF 2021**

AY KOROSS, J

APRIL 28, 2026

BETWEEN

KIHURIA KAMURI APPELLANT

AND

**SAMUEL N KIHURIA & JANE NDU'TA MWANGI (SUING FOR
AND ON BEHALF OF SHANGALI BABA NA MAMA SELF HELP
GROUP) RESPONDENT**

RULING

1. Before this court for determination are two notices of motion filed by the appellant. The first application is dated 8 April 2025, which has been moved pursuant to the provisions of Article 159 of *the Constitution* of Kenya 2010, Sections 1A, IB and 3A of the *Civil Procedure Act*, Order I2 Rule 12 and Order I7 Rule 2 of the Civil Procedure Rules and all other enabling provisions of the law. He seeks the following orders from this court: -
 - a. Spent.
 - b. Spent.
 - c. The honourable court does issue an order for a stay of execution and any proceedings pending the hearing of the appeal.
 - d. That this honourable court be pleased to set aside or vacate its order dated 8 April 2025 dismissing the appeal.
 - e. Spent.
 - f. That the nearest police station to enforce the court order.



- g. Any other order that the honourable court deems fit to grant in the circumstances.
2. The motion is based on the grounds listed on its face and the appellant's supporting affidavit, sworn on the instant date and in summary, he states that the failure to file the supplementary record of appeal as previously directed was an inadvertent mistake by counsel and should not be held against the client. The lower court issued the decree on 26 February 2025, outside the deadline for filing the supplementary record of appeal, which was 15 February 2025.
2. The appellant has filed an appeal raising substantive issues that should be heard and determined by the court on their merits, as these facts require careful consideration by this honourable court. Article 159(2)(d) of *the Constitution* of Kenya requires the court to decide cases based on substantive justice rather than technicalities. The respondent will not suffer any prejudice if the appeal is reinstated, as it was properly before the court. It is in the interest of justice that these orders be granted.
2. This particular motion was opposed on the grounds of opposition filed by the respondents dated 23 April 2025, which raises the following grounds:
 - a. That the motion has been brought under the wrong provisions of the Law, as orders sought to be set aside did not arise under any circumstances enumerated under Orders 12 or 17 of the Civil Procedure Rules.
 - b. The prayers sought, especially prayers 2 and 3 in the motion, cannot be granted as there are no proceedings pending in court capable of being stayed. Essentially, the appellant seeks a stay of a negative order.
 - c. That the appellant was on 29 January 2025 ordered to file and serve a supplementary record of appeal within a period of 21 days, failure to which the appeal would stand dismissed, hence self-executing.
 - d. That the appellant has been indolent in filing the record of appeal after 69 days, despite the decree being dated 26 February 2025, and the supplementary record of appeal being dated 4 March 2025 but filed after 33 days, without any explanation being tendered.
 - e. The order of dismissal of the appeal is dated 29 January 2025 and not 8 April 2025. The appeal stands dismissed, and thus the orders sought cannot be granted. It ought to be noted that the appellant has not sought reinstatement of the appeal.
 - f. The respondent will no doubt suffer prejudice, noting that judgment was entered in their favour on 3rd June 2021 and they have not enjoyed the fruits of their judgment for almost four years.
 - g. The appellant had the option of seeking an extension of the period granted to file the record of appeal or of seeking a review of the orders made on 29th January 2025 before the lapse of the time granted, but did not do so.
5. In response to these grounds, the appellant filed a replying affidavit deposed on 5 May 2025, in which he briefly states that the opposition is based on technicalities and does not support the interests of justice. The appellant seeks the reinstatement of the case, as stated in prayer 4 of the notice of motion, and this honourable court has the authority to reinstate the case for a fair hearing and a full trial in the interest of justice.



5. On the same date, 5 May 2025, the appellant filed a notice of motion under the provisions of Article 50 of *the Constitution* of Kenya and Sections 3 and 3A of the *Civil Procedure Act* of the laws of Kenya, along with all relevant enabling laws, and prays for the following orders:
 - a. Spent.
 - b. That the honourable court be pleased to grant leave and vacate/review its orders dated 8 April 2024 and 29 January 2025, and to reinstate the appeal for hearing on its merits.
 - c. The costs to be determined in due course.
7. The motion is anchored on the grounds stated on its face, and the appellant's supporting affidavit, sworn on the instant date, and he concisely states that he pleads with the honourable court to reinstate the appeal and have the same heard and concluded on merit and that the objective of the court is to help litigants to reach the truth and serve justice on the subject matter before the honourable court. He urges the court to exercise its discretionary powers to reinstate this appeal and have it heard on the merits.
7. This motion is challenged on the grounds of opposition dated 8 December 2025, in which the following grounds are raised:
 - a. That the application has been brought after an inordinate delay, as it seeks to review an order made on 29 January 2025, hence more than three months have passed.
 - b. That there exists no order of the Honourable Court dated 8 April 2025 capable of being reviewed.
 - c. That the application is fatally defective and incompetent and ought to be dismissed with costs, as the applicant has not annexed the orders sought to be reviewed.
 - d. That the applicant seeks to cure the defect in the application dated 8th April 2025 by submitting another application dated 5th May 2025, due to the failure to seek reinstatement of the appeal upon being served with the grounds of objection dated 23rd April 2025, and this constitutes an abuse of the court process.
 - e. That the application dated 5th May 2025 remains defective because it seeks orders to vacate or review court orders in an appeal that does not exist.
9. Upon hearing the parties, the court directed that the motions be canvassed through written submissions. In compliance, M/s. Wakiaga Semekia & Co. Advocates for the appellant filed their written submissions dated 15 December 2025, and M/s. A. M. Mbindyo Co. Advocates for the respondent submitted theirs dated 8 December 2025. Accordingly, after thoroughly examining the motion, including its grounds, the parties' affidavits, the rival submissions, as well as the provisions of law and judicial precedents relied upon, elements which shall be considered in the analysis and determination of this matter, the distilled issue for determination is whether this court should review and/or set aside its orders of 29 January 2025 and confirmed on 8 April 2025 and reinstate the appeal.
10. Nonetheless, prior to addressing the substantive issue, it is necessary to resolve certain preliminary matters. As correctly observed by the respondent in its grounds of opposition, the two applications contain several deficiencies, and to promote judicial efficiency, it would have been preferable for the appellant to combine his motions into a single filing rather than submitting them piecemeal. Thus, it is apparent that the second motion is a reaction to the deficiencies identified in the respondent's grounds



of opposition. Furthermore, there are no ongoing proceedings or a pending appeal that can be stayed, and the orders sought by the appellant in that regard are therefore inappropriate. We will now proceed.

10. Respecting the substantive issue, the relevant law on dismissal of an appeal is found in our Order 42 Rule 35 (1) and (2) of the Civil Procedure Rules, which provides that:

- “(1) 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.
- (2) 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.”

10. The above describes a situation where directions have been issued under Order 42 Rule 13 of the Civil Procedure Rules, which states that:

- “(1) Upon notice to the parties delivered not less than twenty-one days after the date of service of the memorandum of appeal the registrar shall cause the appeal to be listed for the giving of directions by a judge in chambers.
- (2) Any objection to the jurisdiction of the appellate court shall be raised before the judge before he gives directions under this rule.
- (3) The judge in chambers may give directions concerning the appeal generally and in particular directions as to the manner in which the evidence and exhibits presented to the court below shall be put before the appellate court and as to the typing of any record or part thereof and any exhibits or other necessary documents and the payment of the costs of such typing whether in advance or otherwise.
- (4) Before allowing the appeal to go for hearing the judge shall be satisfied that the following documents are on the court record, and that such of them as are not in the possession of either party have been served on that party, that is to say—
- (a) the memorandum of appeal;
- (b) the pleadings;
- (c) the notes of the trial magistrate made at the hearing;
- (d) the transcript of any official shorthand, typist notes electronic recording or palantypist notes made at the hearing;
- (e) all affidavits, maps and other documents whatsoever put in evidence before the magistrate;
- (f) the judgment, order or decree appealed from, and, where appropriate, the order (if any) giving leave to appeal:
- Provided that—
- (i) a translation into English shall be provided of any document not in that language;



- (ii) the judge may dispense with the production of any document or part of a document which is not relevant, other than those specified in paragraphs (a), (b) and (f).

10. Moreover, this court has inherent power to issue orders as appropriate to prevent abuse of the court process and to make such orders as may be necessary to serve the ends of justice or to prevent abuse of the court's process as envisaged by Section 3A of the Civil Procedure Act. Furthermore, Section 3 of the Environment and Land Court Act outlines the overriding objective of this court as follows: -

- “(1) The principal objective of this Act is to enable the Court to facilitate the just, expeditious, proportionate and accessible resolution of disputes governed by this Act.
- (2) The Court shall, in the discharge of its functions under this Act give effect to the principal objective in subsection (1).
- (3) The parties and their duly authorised representatives, as the case may be, shall assist the Court to further the overriding objective and participate in the proceedings of the Court.

10. Most importantly, Practice Direction No. 43 of the Environment and Land Court (ELC), as published in Gazette Notice No. 5178, grants this court broad authority to impose sanctions, including dismissing appeals. Several court decisions have addressed the issue of dismissing an appeal for want of prosecution, including *James & another v Chesimet & another* [2025] KEHC 86 (KLR) and *Mwachidete v Mwangumaye* [2023] KEHC 2286 (KLR).

10. In the present case, the appeal had been pending for four years until it was dismissed 14 days after 29 January 2025. Before that, directions for the hearing of the appeal had been issued on 7 December 2023, but it appears the original record had been missing, and the deputy registrar was instructed to retrieve it, which she did. When this matter came before the court on 29 January 2025, Mr. Wakiaga, acting for the appellant, informed the court that the record of appeal was incomplete as it lacked the extracted decree.

10. After hearing all involved parties, examining the history of the case, reviewing the lower court record, and considering the applicable law, the court directed the appellant to submit a supplementary record of appeal within fourteen days. Failure to comply would result in the appeal being dismissed.

10. Later, when the matter was brought before this court on 8 April 2025, the court affirmed the dismissal and additionally awarded costs to the respondents. Therefore, contrary to the respondent's arguments but in agreement with the appellant, the two orders were issued on the respective dates of 29 January 2025 and 8 April 2025. Furthermore, regarding the respondent's contention that no court orders are attached to the supporting affidavits, this court deems it immaterial, as it is a court of record and the orders are readily available from the court file.

10. The appellant seeks to have these orders set aside and/or reviewed, asserting a mistake on the part of his counsel. Nonetheless, although the appellant invokes Articles 50 and 159 of *the Constitution* and Sections 3 and 3A of the Civil Procedure Act, in this court's view, these legal provisions cannot assist a party who has failed to comply with court orders, has breached the principle of expeditious disposal of court matters, and has squandered the opportunity to be heard on the merits.

10. Concerning review, the pertinent provisions are found in Section 80 of the Civil Procedure Act and Order 45 Rule 1(1) of the Civil Procedure Rules. These provisions permit review on the grounds of



discovery of new and material facts, mistake, and sufficient cause. Regarding the variation or setting aside of court orders, this court exercises its discretionary powers to entertain and determine such applications pursuant to the provisions of Order 12 Rule 7 of the Civil Procedure Rules, which stipulates that where judgment has been entered or the suit has been dismissed under this order, the court, upon application, may set aside or vary the judgment or order upon such terms as are just.

10. In the instant case, the appellant has only asserted that there was a mistake on the part of his counsel without explaining the nature of that error. Nonetheless, the burden was incumbent upon him to produce evidence of such a mistake and/or to substantiate it to the satisfaction of the court. Furthermore, in his earlier affidavit, he merely states that the decree was extracted late on 26 February 2025; however, neither he nor his counsel has explained when the application for the decree was made, nor has he filed a supplementary record of appeal to date, a period of over one year since the order was made.
10. According to the record, the supplementary record of appeal ought to have been filed within 14 days of 29 January 2025, that is, by 12 February 2025. However, the supplementary record of appeal for assessment was submitted on 8 April 2025, which was clearly beyond the prescribed timeframe. An invoice amounting to Kshs. 1,550 was issued in connection with this filing, but the payment has not been received to date. It follows that this court was misled by counsel for the appellant that a supplementary record of appeal had been filed. Thus, there is no supplementary record of appeal on record.
10. Consequently, having previously found that the mistake was neither substantiated nor proved, and noting that the supplementary record of appeal has never been filed to date, this court finds that the prayer for review, variation, or setting aside its orders of 29 January 2025 and 8 April 2025 are unsustainable. This court finds the applications lacking in merit. Based on the above reasons and findings, and after careful consideration, the court dismisses the applications dated 8 April 2025 and 5 May 2025, and since they are unsuccessful, the costs of the applications are awarded to the respondent.

Orders accordingly.

DELIVERED AND DATED AT MACHAKOS THIS 28TH DAY OF APRIL, 2026.

HON. A. Y. KOROSS

JUDGE

28.04.2026

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms. Kanja Court Assistant

Mr. Mbindyo for the respondent.

No appearance for applicant.

