

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CIVIL APPEAL NO. E004 OF 2025

IN THE MATTER OF THE ESTATE OF M' KAIRIAMA KAIRIAMA

- (DECEASED)

MARGARET RUKUNGI M'KOBITU

.....APPELLANT

-VERSUS-

ISSAC MUNG'ATHIA 1ST

RESPONDENT

PATRICK MUGAMI 2ND

RESPONDENT

EZEKIEL KARITHI 3RD RESPONDENT

RULING

1. The application before me is dated 24/11/2025 and seeks the following orders:

a) Spent

- b) That this honourable court be pleased to grant leave to M/s Haron Gitonga & Co advocates to act for the appellant/applicant
 - c) That this honourable court be pleased to review and set aside the order of dismissal of the appeal of 7th October 2025 and reinstate the appeal for hearing and determination on merits.
 - d) That costs for this application be in the cause.
2. In a nutshell the applicant states that this court dismissed her appeal on 7/10/2025 for non-attendance. That her erstwhile__advocates had informed her that her attendance was not necessary and he also failed to attend court. That she has an arguable appeal which she wishes to canvass.
 3. The respondents opposed the application. They aver that the applicant ignored directions of the court on the filing of the record of appeal. That she has demonstrated that she lost interest in the matter. That they are suffering as the appellant continues to utilize the land in question alone.
 4. I have duly considered the application.
 5. The applicant had an advocate on record who lodged the Memorandum of an appeal dated 28th February 2025.

6. When the matter was listed for directions the advocate did not attend. The advocate also failed to abide by the directions of the court to file Record of Appeal.
7. It is trite law that a mistake of an advocate ought not to visit upon the client.
8. In my opinion, allowing the application would be the best way to resolve the dispute, so that each party can have their day in court.
9. I therefore allow the application, reinstate the appeal and issue the following directions:

a. The record of appeal to be filed and served within the next 30 days.

b. The lower court record to be forwarded to this court.

c. A mention date will be given for compliance.

d. The applicant shall bear the costs of this application.

Dated, signed and delivered at Meru this 30th day of April 2026.

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H. M. NYAGA

JUDGE