



REPUBLIC OF KENYA



JBF Global Visions Limited & another v Musmukh (Environment and Land Appeal E010 of 2023) [2025] KEELC 5709 (KLR) (24 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5709 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT AND LAND APPEAL E010 OF 2023**

EC CHERONO, J

JULY 24, 2025

BETWEEN

JBF GLOBAL VISIONS LIMITED 1ST APPELLANT

CANNON MEDICAL HOSPITAL LIMITED 2ND APPELLANT

AND

MULDE KHUMBAR MUSMUKH RESPONDENT

RULING

1. Before me for determination is the application dated 24/03/2025 seeking the following orders;
 - a. The appellants appeal be dismissed for want of prosecution.
 - b. That the Appellants bear the costs of both the appeal and this application.
2. The application is based on grounds apparent on the face of the said application supported by the affidavit of Mulde Kumbhar Hasmukh-the Applicant herein.
3. It is deposed that the memorandum of this appeal in respect of this appeal was filed on 08/09/2023 but the Appellant/Respondent has failed to set it down for directions pursuant to Section 79B of the *Civil Procedure Act* and Order 42 of the *Civil Procedure Act*. That the Appellant/Respondent has neither filed nor served a record of appeal which is indicative that they have lost interest in prosecuting it and that it is only in the interest of justice that the orders sought are granted.
4. Despite being served with the said application, the Appellant/Respondents did not file a response in opposition thereto.



Analysis and determination.

5. The issue for determination in this application is whether the Respondent has shown cause why this appeal should not be dismissed for want of prosecution.
6. I have considered the application and the court record generally and note that the Appellant/ Respondent filed the Memorandum of Appeal dated 14th September 2023 and the appeal was admitted on 7th March 2024. The Appellant did not also move this Court for directions nor file a Record of Appeal. It is also noted that the Appellant/Respondent has not even appeared before this Court since the appeal was lodged. It is this inaction that prompted the Applicant to file the present application seeking dismissal of the appeal for want of prosecution.
7. Section 79B of the *Civil Procedure Act* provides as follows:-

“Before an appeal from a subordinate court to the High Court is heard, a judge of the High Court shall peruse it, and if he considers that there is no sufficient ground for interfering with the decree, part of a decree or order appealed against he may, notwithstanding section 79C, reject the appeal summarily”.
8. Order 42 Rule 11 of the *Civil Procedure Rules* states;

Upon filing of the appeal the appellant shall within thirty days, cause the matter to be listed before a judge for directions under section 79B of the Act.
9. Order 42 Rule 12 of the *Civil Procedure rules* states;

After the refusal of a judge to reject the appeal under section 79B of the Act, the registrar shall notify the appellant who shall serve the memorandum of appeal on every respondent within seven days of receipt of the notice from the registrar.
10. Order 42, rule 13. (1)

On notice to the parties delivered not less than twenty-one days after the date of service of the memorandum of appeal the appellant shall cause the appeal to be listed for the giving of directions by a judge in chambers.
11. Order 42, rule 35(1) states

Unless within three months after the giving of directions under rule 13 the appeal shall not 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.
12. Order 42, Rule 35(2) states;

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.
13. The import of the above provisions of the law is that once directions are given under Order 42 Rule 13 of *Civil Procedure Rules* and the Appellant fails to fix the appeal for hearing, the Respondent may fix the same for hearing and/or dismissal for want of prosecution under Order 42 Rule 35 (1) of the



Civil Procedure Rules or the registrar may list the appeal before a judge for dismissal under Order 42 Rule 35 (2) of Civil Procedure Rules.

14. The bottom line is that directions as contemplated under Section 79B of the Civil Procedure Act must have been given before an appeal can be dismissed for want of prosecution. As I had earlier indicated, the said directions were issued by the court on the 07/03/2024 and the Applicant's application in my view is proper. Therefore, it is clear that this appeal cannot be sustained on grounds of inordinate delay which is also inexcusable. Indolent litigants are no longer permitted to file cases for the sake of it which do not serve the interests of justice.
15. In the end, I find the application dated 24/03/2025 merited and the same is allowed as prayed. Consequently, this appeal be and is hereby dismissed for want of prosecution with costs to the Respondent.
16. Orders accordingly.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 24TH DAY OF JULY, 2025.

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HON.E.C CHERONO

ELC JUDGE

In the presence of;

1. Mr. Maloba for the Respondent
2. Appellant/Advocate-absent.
3. Bett C/A.

