



**Guchua v Kenya Forest Service (Criminal Appeal 40 of 2020)
[2026] KEHC 6161 (KLR) (7 May 2026) (Ruling)**

Neutral citation: [2026] KEHC 6161 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL APPEAL 40 OF 2020
RN NYAKUNDI, J
MAY 7, 2026**

BETWEEN

JOHN KARIUKI GUCHUA APPELLANT

AND

KENYA FOREST SERVICE RESPONDENT

(Being an appeal from the ruling and orders of the chief magistrate court of Kenya at Eldoret delivered by (Hon. L. Kassan C.M) on 10th August, 2020 in Misc. Application NO.379 OF 2020)

RULING

1. The Appellant in this case aggrieved with the decision of Hon. Kassan delivered on 11th August 20020 filed a memorandum of appeal based on the following grounds namely:
 - a. That the Learned trial Magistrate erred in law and in fact in failing to take into account the totality of the evidence and facts presented before him in arriving at the said decision to forfeit the Aloe Vera.
 - b. That the Learned trial magistrate erred in law and in fact in failing to take into account that the state through the director of public prosecutions who are constitutionally mandated was not opposed to the aloe Vera being released to the Appellant.
 - c. That the Learned trial magistrate erred in law and fact by dwelling on extraneous matters in arriving at the said decision of forfeiting the aloe Vera to the Kenya forest service.
 - d. That the Learned trial magistrate erred in law and in fact in failing to consider that the applicant had a certificate of origin and all the necessary documents as stipulated under the law.
 - e. That the Learned trial magistrate erred in law and in fact in failing to consider that the Aloe Vera does not fall within the jurisdiction of Kenya forest service.



- f. That the Learned trial magistrate failed to acknowledge the circumstances of the case and render a just and accurate decision.
- g. That the Learned trial magistrate erred in law and fact by failing to give the applicant herein a fighting chance to defend his ownership of the Aloe Vera.
- h. Reasons wherefore the Appellant prays for orders that:
 - a. This appeal be allowed.
 - b. The impugned ruling and orders of the court with regard to forfeiture of the Aloe Vera be set aside, dismissed and/or quashed.
 - c. Costs of this appeal be borne by the Respondent.
 - d. This Honourable Court makes such further orders as it deems fit and just to grant so as to meet the ends of justice.

Decision

2. This appeal has not been prosecuted since it was filed by the Appellant in the year 2020. The law is very clear in this issue on inordinate delay and it is beholden to the Court which has jurisdiction to dismissed such appeal that has not been prosecuted for a long period under a doctrine of want of prosecution as expressly provided for under the CPR.
3. The key principles under legal provisions: Order 42 Rule 35(2) (Civil Procedure Rules): If an appeal is not set down for hearing within one year after service of the Memorandum of Appeal, the Registrar may list it for dismissal. Order 42 Rule 35(1): Dismissal can occur if an appeal is not set down within three months after directions have been given. Inordinate and Inexcusable Delay: The court assesses whether the delay is inordinate, unjustifiable, and causes prejudice to the respondent. Discretionary Power: Reinstatement of a dismissed appeal is not a right but a discretionary remedy based on fairness.
4. Decided Cases and Relevant Rulings: *Smartkar General Trading Ltd v Kenya Revenue Authority* [2021] eKLR (Civil Appeal 51 of 2018): The court dismissed the appeal citing undue delay, noting that if the appellant is personally to blame for the delay, they must bear the consequences. *Rono v Bank of Africa Ltd*: Emphasized that prolonged inactivity constitutes an abuse of process. *Ivita v Kyumbu* [1984] KLR 441: Established the foundational test for dismissal for want of prosecution, often cited in modern cases to determine if a delay is inordinate and inexcusable. *Tabuche v Tinga & 2 others* (2024): Confirmed that reinstatement of a suit dismissed for want of prosecution is a discretionary remedy, not a right. *Wade Cox & 2 Others v George* (2025): The Supreme Court upheld the dismissal of a case where the private prosecutor failed to appear for over 1 year and 4 months, finding no plausible reason for the delay.
5. In reference to this issue the Court in the case of *Utalii Transport Company Limited & 3 Others vs. NIC Bank Limited & Anor* [2014] eKLR ruled as follows:

“Whereas there is no precise measure of what amounts to inordinate delay and whereas what amounts to inordinate delay will differ from case to case depending on the circumstances of each case; the subject matter of the case; the nature of the case; the explanation given for the delay; and so, on and so forth. Nevertheless, inordinate delay should not be difficult to ascertain once it occurs; the litmus test being that it should be an amount of delay which



leads the court to an inescapable conclusion that it is inordinate and therefore, inexcusable. On applying court's mind on the delay, caution is advised."

6. In this matter pending before this Court all relevant factors have been taken into account and there is no compelling evidence why it has taken the Appellant over 4 years to prosecute his appeal. A concise account of the circumstances that have contributed to the delay has not been shared by the Appellant with this Court. It is for these reasons that this appeal stands dismissed for want of prosecution.

DATED, DELIVERED AND SIGNED AT ELDORET THIS 7TH DAY OF MAY 2026.

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R. NYAKUNDI

JUDGE

