



**Gisore v Nyamweya (Environment and Land Appeal
E009 of 2023) [2025] KEELC 5541 (KLR) (22 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5541 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT AND LAND APPEAL E009 OF 2023**

M SILA, J

JULY 22, 2025

BETWEEN

JANE MOKOMBA GISORE APPELLANT

AND

MICHAEL NYAMWEYA NYAMWEYA RESPONDENT

RULING

(Application to reinstate an appeal dismissed for non-attendance; Order 42 Rule 21; application allowed subject to payment of costs)

1. The application before me is that dated 27 March 2025 by the appellant. It seeks orders that this appeal, which was dismissed on 1 April 2025 for non-attendance under Order 42 Rule 20, be reinstated for hearing. The application is opposed.
2. The background is that this appeal was admitted for hearing on 25 February 2025. On that date, I directed that the appeal be canvassed by way of written submissions and oral highlighting at the hearing thereof. I gave Mr. Begi, learned counsel for the appellant, 14 days to file and serve his submissions, and Mr. Soire, learned counsel for the respondent, 14 days to file and serve his replying submissions. I directed that the appeal be heard on 1 April 2025.
3. No submissions were filed by Mr. Begi within the 14 days or at all. Neither did Mr. Begi nor the appellant appear in court at the hearing of the appeal. The appeal was thus dismissed under Order 42 Rule 20 for non-attendance. Subsequently, this application was filed. It is one filed under Order 42 Rule 21 which provides as follows :

21. Re-admission of appeal dismissed for default [Order 42, rule 21.]

Where an appeal is dismissed under rule 20, the appellant may apply to the court to which such appeal is preferred for the re-admission of the appeal; and, where it is proved that he was



prevented by any sufficient cause from appearing when the appeal was called on for hearing, the court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.

4. The application is supported by the affidavit of Edward Aboki Begi who is counsel on record for the appellant. He has deposed that there was a mix-up in his office which led to the matter not being brought to his attention.
5. The application is opposed by the replying affidavit of Jeremiah Onsare Soire, who is counsel on record for the respondent. He points out that Mr. Begi has not annexed his diary for 1 April 2025 so that it can be seen whether or not the matter was diarized from his office.
6. I have considered the application. First, I need to say that I am rarely comfortable when I see counsel swearing affidavits. I ask myself whether the application is actually one which the appellant wishes to make and whether the response is one that the respondent actually wishes to make. Cases are for parties, and not counsel, and you would expect such application and any reply thereof to be made by the parties themselves. An affidavit by counsel can be filed as an additional affidavit to supplement that filed by the party where an explanation is one which is within the knowledge of counsel.
7. Anyway, considering that this is a case over land, I will utilise my discretion to readmit the appeal for hearing subject to the applicant compensating the respondent for the costs of the day when the appeal was dismissed. Thus, subject to payment of throw away costs, which I assess at Kshs. 15,000/=, payable within the next 14 days, time being of essence, the appeal is reinstated. If the throw away costs are not paid within the stipulated period, this appeal will remain dismissed. If they are paid, the appeal will be reinstated.
8. Orders accordingly.

DATED AND DELIVERED THIS 22 DAY OF JULY 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of :

Mr. Begi for the appellant

Mr. Soire for the respondent

Court Assistant – Michael Oyuko.

