



Villa Greens Limited v Creekview Limited (Environment and Land Appeal E082 of 2022) [2025] KEELC 136 (KLR) (16 January 2025) (Ruling)

Neutral citation: [2025] KEELC 136 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E082 OF 2022**

**JO MBOYA, J
JANUARY 16, 2025**

BETWEEN

VILLA GREENS LIMITED APPELLANT

AND

CREEKVIEW LIMITED RESPONDENT

RULING

Introduction and Background

1. The Applicant herein has approached the court vide the Notice of Motion dated the 22nd October 2024; brought pursuant to the provisions of Order 51 Rule 1 of the Civil Procedure Rules; Section 1A, 1B and 3A of the *Civil Procedure Act* and Article 50 and 159 of *the Constitution* 2010; and wherein the Applicant has sought for the following reliefs;
 - i. That this matter be certified urgent and be heard Ex- parte in the first instance.
 - ii. That this Honourable Court be pleased to reinstate this Appeal and set aside orders issued on 3rd October, 2024.
 - iii. That the Appellant be granted Leave to file and serve the Record of Appeal out of time.
 - iv. That costs of this Application be provided for.
2. The instant application is premised on the various grounds which have been highlighted at the foot thereof. In addition, the application is supported by the affidavit of Mwenda Sawa Chokera [deponent] sworn on even date.
3. Upon being served with the subject application, the Respondent filed a Replying affidavit sworn by one Vivek Shah. The Replying affidavit is sworn on the 29th November 2024. In particular, the



deponent has averred that the Applicant herein is guilty of inordinate delay and hence the conduct of the Applicant is devoid of diligence.

4. The application beforehand came up for hearing on the 5th November 2024, whereupon the advocates for the parties covenanted to canvass/ventilate the application by way of written submissions. In this regard, the court proceeded to and circumscribed the timelines for the filing and exchange of the written submissions.
5. Suffice it to state that the Applicant filed written submissions dated the 13th December 2024; whereas the Respondent filed written submissions dated the 10th December 2024. Notably, the two [2] sets of written submissions form part of the record of the court.

Parties' Submissions:

a. Applicant Submissions:

6. The Applicant filed written submissions dated the 13th December 2024; and wherein the Applicant has adopted the grounds contained at the foot of the application. In addition, the Applicant has reiterated the averments contained in the body of the supporting affidavit.
7. Furthermore, learned counsel for the Applicant has highlighted and canvassed three [3] salient issues for consideration and determination by the court. Firstly, learned counsel for the Applicant has submitted that the instant application has been filed and lodged without unreasonable delay. In this regard, it has been contended that the appeal was dismissed on the 3rd October 2024 whilst the application beforehand was filed on the 22nd October 2024.
8. Premised on the foregoing position, learned counsel for the Applicant has invited the court to find and hold that the duration between the dismissal of the appeal and the filing of the instant application, is neither unreasonable nor inordinate. Simply put, learned counsel for the Applicant has contended that the application has been filed timeously and with due promptitude.
9. Secondly, learned counsel for the Applicant has submitted that the Applicant herein procured and obtained the proceedings and the judgment from the business premises rent tribunal and thereafter handed same [proceedings] to her previous advocates. It has been contended that upon handing over the proceedings and judgment to her erstwhile advocate, the Applicant believed that her previous advocate would proceed to file the record of appeal.
10. Nevertheless, learned counsel for the Applicant has submitted that the Applicant was taken aback when same discovered that the appeal had been dismissed for want of prosecution. Suffice it to state that the Appellant thereafter discovered and established that her previous advocate had neither filed nor served the record of appeal.
11. Additionally, learned counsel of the Applicant has submitted that upon enquiry, the Applicant established that her previous counsel had proceeded for a maternity leave prior to and before filing the record of appeal. In this regard, learned counsel for the Applicant has therefore impressed upon the court to find and hold that the failure to file the record of appeal in accordance with the directions of the court was neither intentional nor deliberate.
12. On the contrary, learned counsel for the Applicant has submitted that the failure by the Applicant's previous counsel to file the record of appeal was informed by the fact that counsel proceeded on maternity leave. To this end, it has been posited that the reason underpinning the failure to file the record of appeal is therefore excusable in the eyes of the law.



13. Thirdly, learned counsel for the Applicant has submitted that by the time the appeal was dismissed for want of prosecution, no directions had been taken/given. To this end, learned counsel for the Applicant has submitted that prior to and before the giving of directions under Order 42 Rule 13 of the Civil Procedure Rules, 2010, the court was divested of jurisdiction to dismiss the appeal for want of prosecution.
14. Arising from the foregoing, learned counsel for the Applicant has therefore submitted that the dismissal of the appeal on the 3rd October 2024, prior to the giving of directions constitutes an illegality and hence the impugned order ought to be set aside and/or varied.
15. In support of the contention that an appeal cannot be dismissed for want of prosecution prior to the giving of directions, learned counsel for the Applicant has cited and referenced the decision in the case of *Njoroge & Another v Monyo [Civil Appeal No. 96 of 2021]* [2024] KEHC 3161; wherein it is contended that the court found and held that an appeal cannot be dismissed [sic] prior to the giving of directions.
16. Flowing from the foregoing submissions, learned counsel for the Applicant has therefore invited the court to find and hold that the application beforehand is merited and thus same [application] ought to be allowed.

b. Respondent's Submissions:

17. The Respondent filed written submissions dated the 10th December 2024 and wherein same [Respondent] has reiterated the contents of the Replying affidavit sworn on the 29th November 2024. In addition, the Respondent has ventured forward and highlighted three [3] salient issues for consideration by the court.
18. First and foremost, learned counsel for the Respondent has submitted that the Applicant herein was afforded numerous opportunities to compile and file the record of appeal. In particular, learned counsel for the Respondent has posited that the Applicant was afforded various opportunities totalling 15 in number. Nevertheless, Learned counsel for the Respondent has submitted that despite the diverse opportunities, the Applicant and her counsel failed to file and serve the record of appeal.
19. Arising from the foregoing, learned counsel for the Respondent has submitted that the conduct of the Applicant and that of her previous counsel reeks of slovenliness and want of due diligence. To this end, learned counsel for the Respondent has implored the court to find and hold that the conduct of the Applicant is not befitting the exercise of equitable discretion.
20. Secondly, learned counsel for the Respondent has submitted that the Applicant herein has failed to establish and or demonstrate the existence of sufficient cause. In particular, it has been submitted that the Applicant has not tendered any plausible or cogent reasons to explain the failure to file the record of appeal within the timeline set by the court.
21. In the absence of a plausible or cogent reason, learned counsel for the Respondent has submitted that the Applicant is therefore not deserving to partake of and or benefit from equity. In any event, it has been posited that equity aids the vigilant and not the indolent.
22. To support the submissions touching on lack of plausible/ cogent evidence, learned counsel for the Respondent has cited and referenced various decisions including *Simon Wachira Nyanga v Patricia Wamwira* [2018]eKLR; *Cicilia Wanja Waweru v Jackson Wainaina Muiruri & Another* [2014]eKLR.
23. Thirdly, learned counsel for the Respondent has also submitted that the Applicant herein has been guilty of filing various and numerous suits across various courts in an endeavour to defeat the



Respondent's right to levy distress. To this end, learned counsel for the Respondent has invited the court to take cognizance of the contents of paragraph 9 of the Replying affidavit of Vivek Shah sworn on the 29th November 2024.

24. Owing to the foregoing, learned counsel for the Respondent has submitted that the conduct of the Applicant herein constitutes and amounts to an abuse of the due process of the court. In this regard, the court has been implored to decline the reinstatement of the instant appeal.
25. Finally, learned counsel for the Respondent has submitted that the Respondent herein shall be disposed to suffer undue prejudice and grave injustice if the instant application was to be allowed. In particular, it has been contended that the Respondent will continue to be disposed to unnecessary proceedings and expense, merely because the Applicant herein is not keen to exercise due diligence.
26. Instructively, learned counsel for the Respondent has invited the court to take cognizance of the provisions of Section 1A and 1B of the Civil Procedure Act and Article 159[2][d] of the Constitution 2010.
27. In a nutshell, learned counsel for the Respondent has invited the Honourable court to find and hold that the application beforehand is devoid of merits and thus same [application] ought to be dismissed with costs.

Issues For Determination:

28. Having reviewed the Notice of Motion application dated the 22nd October 2024; the supporting affidavit and the replying affidavit in opposition thereto and upon consideration of the written submissions filed on behalf of the parties', the following issues emerge [crystalize] and are thus worthy of determination;
 - i. Whether the instant Application has been mounted without unreasonable and inordinate delay or otherwise.
 - ii. Whether the Applicant has established and demonstrated sufficient cause to warrant the exercise of the discretion of the court or otherwise.
 - iii. Whether the court has jurisdiction to dismiss an appeal for want of prosecution prior to and before the taking/giving of directions or otherwise.

Analysis And Determination

Issue Number 1 Whether the instant application has been mounted without unreasonable and inordinate delay or otherwise.

29. The Applicant herein filed the instant appeal on the 23rd September 2022. In addition, the Applicant also filed an application for stay of execution pending the hearing and determination of the appeal. Suffice it to state that the application for stay of execution pending the hearing and determination of the appeal was heard and disposed of vide ruling rendered on the 19th July 2023.
30. Following the delivery of the ruling in respect of the application for stay, the court proceeded to and issued directions pertaining to and concerning the filing of the record of appeal. Nevertheless, the Applicant herein failed to file the record of appeal either in the manner directed or at all.
31. On the 3rd October 2024, the appeal beforehand came up for mention to confirm whether the Appellant/Applicant had filed and served the record of appeal. However, when the matter was called



out both the Applicant and her counsel were absent. Furthermore, it also transpired that no record of appeal had been filed.

32. Arising from the fact that no record of appeal had been filed and served, learned counsel for the Respondent applied to have the appeal dismissed for want of prosecution. There being no explanation by and on behalf of the Applicant, the court proceeded to and dismissed the appeal for want of prosecution.
33. Be that as it may, the Applicant has now returned to court vide the instant application and same [Applicant] is seeking that the order dismissing the appeal. Suffice it to state that the application beforehand is dated the 22nd October 2024.
34. The question that does arise relates to whether or not the instant application has been filed and/or mounted with unreasonable and inordinate delay. Nevertheless, it is evident that the application beforehand was filed barely 20 or 21 days from the date of the order dismissing the appeal. In this regard, what is pertinent for determination is whether the duration is inordinate or otherwise.
35. To my mind, the determination of whether or not the duration taken is inordinate or otherwise depends on various factors inter-alia the length of time, the reasons for the delay and the circumstances surrounding the matter in question. Notably, there is no hard and first rule in determining inordinate delay, save that the court is enjoined to appraise the totality of circumstances. [See the holding of the Court of Appeal in the case of Andrew Kiplagat Chamaringo versus Paul Kipkorir Kibet [2018]ekl]
36. As pertains to constitutes unreasonable or inordinate delay, the parameters to be taken into account were enunciated and elaborated upon by the Supreme Court of Kenya in the case of the County Executive of Kisumu v County Government of Kisumu & 8 others (Civil Application 3 of 2016) [2017] KESC 16 (KLR) (Civ) (12 April 2017) (Ruling), where the court stated thus:
 23. It is trite law that in an application for extension of time, the whole period of delay should be declared and explained satisfactorily to the Court. Further, this Court has settled the principles that are to guide it in the exercise of its discretion to extend time in the Nicholas Salat case to which all the parties herein have relied upon. The Court delineated the following as: the underlying principles that a Court should consider in exercise of such discretion:
 1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
 2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
 3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
 4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
 5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 6. Whether the application has been brought without undue delay; and
 7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”



37. Though the court was dealing with the parameters to be addressed and satisfied in application for extension of time, it is imperative to state that the principles highlighted by the supreme court in the decision [supra] applies mutatis mutandis in endeavour to ascertain whether there is an inordinate or unreasonable delay.
38. Taking into account the highlighted principles and coupled with the obtaining circumstances, I am persuaded that the duration taken before the filing and lodgement of the subject application was neither unreasonable nor inordinate. In any event, it is not lost on the court that the Applicant's counsel is reported to have gone on maternity leave and thus precipitating the events including the dismissal of the appeal for want of prosecution.

Issue Number 2 Whether the Applicant has established and demonstrated sufficient cause to warrant the exercise of the discretion of the court or otherwise.

39. The Applicant herein has contended that same procured and obtained the proceedings and the judgment from the business premises rent tribunal and thereafter handed over same to her previous counsel. To this end, the Applicant has posited that upon availing the proceedings and the judgment to her previous counsel, same [Applicant] believed that her previous counsel would proceed and file the record of appeal.
40. However, the Applicant has further contended that without notice unto her [Applicant] her previous counsel proceeded onto maternity leave prior to and before filing the record of appeal. Suffice it to underscore that the primary reasons espoused by the Applicant that underpins the failure to file and serve the record of appeal relates to the fact that its counsel proceeded on maternity leave.
41. Premised on the foregoing position, the Applicant herein has contended that the reasons underpinning the failure/neglect was neither intentional nor deliberate. On the contrary, it has been posited that the reasons that has been adverted to and proffered constitutes sufficient basis to warrant the exercise of discretion by the court.
42. On the other hand, the Respondent herein contends that the Applicant has been less than diligent in prosecuting the subject appeal. In particular, it has been contended that the Applicant has been afforded more than sufficient latitude and opportunity to file and serve the record of appeal. Nevertheless, it has been contended that the Applicant has been bidding its time and thus her conduct does not merit equitable discretion or favourable treatment by the Honourable Court.
43. Additionally, the Respondent has contended that the Applicant herein has been guilty of filling a plethora of suits/matters across several courts. To this end, the Respondent has cited and referenced paragraph 9 of the replying affidavit sworn by Vivek Shah on the 29th November 2024.
44. Arising from the foregoing, the Respondent has implored the court to find and hold that the conduct of the Applicant has been inequitable and thus the Applicant has not established sufficient cause to warrant the intervention of the court. In any event, the Respondent has implored the court to invoke and deploy the provisions of Sections 1A and 1B of the Civil procedure Act, Chapter 21, Laws of Kenya.
45. Having considered the rival submissions, I beg to take the following position. Firstly, there is no gainsaying that the Applicant had been afforded reasonable opportunity and latitude to file and serve the record of appeal. Furthermore, it is common ground that the Applicant failed to file and serve the record of appeal leading to the dismissal of the appeal for want of prosecution and non-compliance with the court orders.



46. Nevertheless, it is not lost on the court that the Applicant has returned to court and same contends that the failure to file and serve the record of appeal was occasioned by the fact that its counsel previously on record proceeded on maternity leave. It has been contended that it is the counsel who was obligated to file and serve the record of appeal and hence her failure was neither intentional nor deliberate.
47. Suffice it to underscore that the reasons that have been espoused and proffered by the Applicant to underpin the failure to file and serve the record of appeal is plausible, reasonable and cogent. In any event, if the Applicant's counsel proceeded on maternity leave, it was not conceivable for her to revert back to office and engage with the rigours of office practice prior to the end of maternity period. For good measure, maternity is provided for and circumscribed under the provisions of *Employment Act, 2007*. Consequently, the Learned Counsel, like all others ladies, was entitled to partake of her maternity Leave.
48. To my mind, the reasons beforehand and which underpin the failure to file the Record of Appeal constitute[s] sufficient cause. In any event, the reasons is not only bona fide but credible and believable. To this end, I am minded to give the Applicant the benefit of doubt. Simply put, it is my finding and holding that the Applicant has established and demonstrated sufficient cause.
49. As pertains to what constitutes sufficient cause, it suffices to cite and reference the decision in the case of The Hon. *Attorney General v The Law Society of Kenya & Another – Civil Appeal (Application) No. 133 of 2011* [Unreported] where the Court of Appeal observed as follows;

“Sufficient cause or good cause in law means:-

‘The burden placed on a litigant (usually by court rule or order) to show why a request should be granted or an action excused.’ See Black’s Law Dictionary, 9th Edition, page 251.

Sufficient cause must therefore be rational, plausible, logical, convincing, reasonable and truthful. It should not be an explanation that leaves doubt in a Judge’s mind. The explanation should not leave unexplained gaps in the sequence of events.”

50. What constitutes sufficient cause was similarly highlighted and deliberated upon in the case of Wachira Karani v Bildad Wachira [2016]eKLR. For coherence, the court stated as hereunder;

It’s important for me to mention that in the above case, the court defined what constitutes sufficient cause and in this respect the following paragraph is highly relevant to the issues before me:-

“Once the defendant satisfies the court on either, the court is under duty to grant the application and make the order setting aside the ex parte decree, subject to any conditions the court may deem fit. However, what constitutes ‘sufficient cause’ to prevent a defendant from appearing in Court, and what would be ‘fit conditions’ for the court to impose when granting such an order, necessarily depend on the circumstances of each case.

Although it is an elementary principle of our legal system, that a litigant who is represented by an advocate, is bound by the acts and omissions of the advocate in the course of the representation, in applying that principle, courts must exercise care to avoid abuse of the system and or unjust or ridiculous results. A litigant ought not to bear the consequences of the advocates default, unless the litigant is privy to the default, or the default results from failure, on the part of the litigant, to give the advocate due instructions”



The applicant is required to satisfy to the court that he had a good and sufficient cause. What does the term "sufficient cause" mean.? The Court of Appeal of Tanzania in the case of *The Registered Trustees of the Archdiocese of Dar es Salaam vs The Chairman Bunju Village Government & Others*[9] discussing what constitutes sufficient cause had this to say:-

“It is difficult to attempt to define the meaning of the words ‘sufficient cause’. It is generally accepted however, that the words should receive a liberal construction in order to advance substantial justice, when no negligence, or inaction or want of bona fides, is imputed to the appellant” (Emphasis added)

51. Finally, and before departing from the issue beforehand, it also instructive to point out that the Applicant has endeavoured to account for and explain the reasons why the appeal was dismissed for want of prosecution and non-compliance with the court directions. Pertinently, the explanation given has since been found to be plausible and cogent.
52. Suffice it to state that the reasons that have been availed and or proffered warrants the intervention of the court. In any event, it has been stated times without number that it is the reasons proffered that would enable the court to consider whether or not to exercise its discretion in favour of a litigant or otherwise.
53. To this end, it suffices to highlight and reference the holding in the case of *Njoroge v Kimani* (Civil Application Nai E049 of 2022) [2022] KECA 1188 (KLR) (28 October 2022) (Ruling); where the Court of Appeal [per Mativo J.A] stated thus:
 12. In order to exercise its discretion whether or not to grant condonation, the court must be appraised of all the facts and circumstances relating to the delay. The applicant for condonation must therefore provide a satisfactory explanation for each period of delay. An unsatisfactory explanation for any period of delay will normally be fatal to an application, irrespective of the applicant’s prospects of success. Condonation cannot be had for the mere asking.

An applicant is required to make out a case entitling him to the court’s indulgence by showing sufficient cause, and giving a full, detailed and accurate account of the causes of the delay. In the end, the explanation must be reasonable enough to excuse the default.
 13. Equally important is that an application for condonation must be filed without delay and/or as soon as an applicant becomes aware of the need to do so. Thus, where the applicant delays filing the application for condonation despite being aware of the need to do so, or despite being put on terms, the court may take a dim view, absent a proper and satisfactory explanation for the further delays.
54. Flowing from the foregoing analysis, my answer to issue number two [2] is to the effect that the Applicant has been able to demonstrate sufficient cause to warrant the exercise of discretion in its favour. For good measure, the reasons underpinning the application beforehand is not only plausible and cogent; but same is also bona fide and thus deserving of condonation.

Issue Number 3 Whether the court has Jurisdiction to dismiss an appeal for want of prosecution prior to and before the taking/giving of directions or otherwise.

55. The Applicant herein raised and canvassed a curious issue. The issue relates to and or touches on the contention that a court of law cannot dismiss an appeal for want of prosecution prior to and/or before the giving of directions in terms of Order 42 Rule 13 of the Civil Procedure Rules 2010.



56. Premised on the foregoing contention, learned counsel for the Applicant therefore submitted that insofar as no directions had been given in respect of the subject appeal, the orders issued by the court on the 3rd October 2024; were therefore illegal and void. To this end, learned counsel thus implored the court to set aside the impugned orders ex-debito justitae [as a matter of course].
57. To underscore the submissions that an appeal cannot be dismissed for want of prosecution prior to and before the giving of directions in line with Order 42 Rule 13 of the Civil Procedure Rules 2010, learned counsel for the Applicant cited and referenced the decision of the high court in the case of *Njoroge & Another v Monyo [Civil Appeal no. 96 of 2021]* 2024 KEHC 3164 [KLR] and *Pripoint Solution Ltd & Another v Lucy Wauthegeni Wanderi [2020]eKLR*, respectively.
58. Despite the submissions by learned counsel for the Appellant, it is apposite to state and underscore that a court of law is seized and possessed of the statutory mandate to dismiss an appeal for want of prosecution and/or for non-compliance with the directions of the court even prior to or before the giving of directions.
59. In particular, it is not lost on this court that the provisions of Order 42 Rule 35 of the Civil Procedure Rules, 2010; provide a dual track, conferring upon a court of law the jurisdiction to deal with an appeal. In the first instance, an appeal can be dismissed for want of prosecution if no action is taken within three months from the date of giving directions. In the second instance, an appeal can, be dismissed if no steps have been taken by the Appellant within 1 year from the date of service of the Memorandum of Appeal.
60. Given the significance of order 42 Rule 35 of the Civil Procedure Rules, 2010; in underscoring the jurisdiction of the court to deal with the dismissal of appeal, it is imperative to reproduce same.
61. The provisions of Order 42 Rule 35 [supra] are reproduced as hereunder;
35. Dismissal for want of prosecution [Order 42, rule 35]
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.
62. My understanding of the provisions of Order 42 Rule 35 [2] of the Civil procedure Rules 2010 drives me to the conclusion that an appeal can be dismissed by the court even prior to and/or before the giving of directions. What is imperative is the fact that the court has satisfied its self that the ingredient[s] highlighted under the law have been established and/or met.
63. To my mind, it is an erroneous interpretation of the law and/or contention for learned counsel for the Applicant to posit that an appeal cannot be dismissed for want of prosecution prior to and before the giving of directions under Order 42 Rule 13 of the Civil Procedure Rules 2010. Quite clearly, the position advanced by Learned Counsel for the Applicant herein is misconceived.
64. Other than the foregoing exposition of the law, it is also imperative to draw the attention of learned counsel for the Applicant to the provisions of Sections 1A and 1B of the *Civil Procedure Act*, Chapter 21, Laws of Kenya. Pertinently, the provisions of Section 1A [Supra] clothes the court with the



mandate to mete out any sanction that the court may deem just, proportionate and expedient, taking into account the nature of infraction or default by a party.

65. Notably, one of the sanctions that a court of law is clothed with and mandated to mete out is to dismiss any suit or proceedings, including an appeal, where an Appellant is not keen to comply with the directions/ orders of the court.
66. Finally, it is also worthy to cite and reference the provisions of Section 3A of the *Civil Procedure Act*, Chapter 21, Laws of Kenya; which underpins the concept of inherent/intrinsic/residual jurisdiction of the court. Instructively, the inherent jurisdiction of the court vests upon the court such powers to avert injustice or ensure that the ends of justice are met.
67. Without endeavouring to exhaust the depth and width of what constitutes inherent power of the court, it suffices to posit that a court of law in appropriate circumstances can invoke and deploy its inherent jurisdiction to dismiss any suit or proceedings. Such invocation and deployment are intended to ensure that the ends of justice are met or to avert a miscarriage of justice.
68. Finally, it is imperative to cite and reference the decision of the Supreme Court in the case of *Narok County Government v Livingstone Kunini Ntutu*, [2018] eKLR, where the court expounded on the concept of inherent jurisdiction.
69. For coherence the court stated thus;
 99. Further in *Benjoh Amalgamated Limited & another v Kenya Commercial Bank Limited* [2014] eKLR the Court of Appeal set out the principles to guide the Court in exercising inherent jurisdiction in these words; “The jurisprudence that emerges from the case-law from the aforementioned jurisdictions shows that where the Court is of final resort, and notwithstanding that it has not explicitly been statutorily conferred with the jurisdiction to reopen a decided matter, it has residual jurisdiction to do so in cases of fraud, bias, or other injustice with a view to correct the same and in doing so the principles to be had regard to are, on the one hand, the finality principle that hinges on public interest and the need to have conclusiveness to litigation and on the other hand, the justice principle that is pegged on the need to do justice to the parties and to boost the confidence of the public in the system of justice. As shown in the various authorities, this is jurisdiction that should be invoked with circumspection...” (Emphasis added.)
 100. The conclusion drawn from the above citations is that this court, indeed any other appellate court, even where there are no specific provisions to do an act, has inherent and/or residual powers to act in a fair or equitable manner in the interest of justice and/or to ensure the observance of the due process of the law. Therein also lies the power for the court to act to prevent abuse of court process by one party so that fairness is maintained between all parties.
70. Such is the scope and extent of the inherent powers of the court. To this end, there is no gainsaying that in an appropriate case where an appellant fails or refuses to comply with the directions of the court, the court is certainly not powerless.

Final Disposition:

71. Notwithstanding the findings of the court as pertains to issue number three [3] herein before, it is evident that the court has come to the conclusion that the Applicant herein has indeed established sufficient cause to warrant the exercise of equitable discretion in her favour.



72. Consequently, and in the circumstances, the final orders that commend themselves to the court are as hereunder;
- i. The Application dated the 22nd October 2024, be and is hereby allowed.
 - ii. The orders of the court issued on the 3rd October 2024 be and are hereby vacated and set aside.
 - iii. The instant appeal be and is hereby reinstated and restored for hearing and determination on merits.
 - iv. The Appellant shall proceed to file and serve the record of appeal within 30 days from the date of the ruling.
 - v. In default to file and serve the record of appeal in terms of clause [iv] herein above, the appeal shall stand dismissed for want of prosecution without further reference to court.
 - vi. The cost of the application be and are hereby awarded to the Respondent.
 - vii. The costs in terms of clause [vi] hereinabove be and are hereby assessed and certified in the sum of kes.30,000/= only and same shall be paid within 30 days from the date hereof.
 - viii. In default to pay the costs in terms of clause [vii] the Respondent shall be at liberty to execute in the conventional manner.

73. It is so ordered.

DATED, SIGNED AND DELIVERED ON THE 16TH DAY OF JANUARY 2025.

OGUTTU MBOYA,

JUDGE.

In the presence of:

Benson – Court Assistant.

Mr. Oonge for the Appellant/Applicant.

Ms. Nyokabi for the Respondent.

