



REPUBLIC OF KENYA



KENYA LAW
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**Macharia & 7 others v Mugo & another (Civil Appeal (Application)
73 of 2014) [2022] KECA 1210 (KLR) (4 November 2022) (Ruling)**

Neutral citation: [2022] KECA 1210 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) 73 OF 2014
HA OMONDI, KI LAIBUTA & PM GACHOKA, JJA
NOVEMBER 4, 2022**

BETWEEN

**WILLY WANYOIKE MACHARIA 1ST APPELLANT
DANIEL MWANGI MUGO 2ND APPELLANT
ONESMUS NG'ANG'A MUGO 3RD APPELLANT
MACHARIA MUGO 4TH APPELLANT
DANIEL MUTHOGA MACHARIA 5TH APPELLANT
SIMON MUGO MACHARIA 6TH APPELLANT
MWANGI WANYOIKE 7TH APPELLANT
WANYOIKE MACHARIA 8TH APPELLANT**

AND

**DANIEL NG'ANG'A MUGO 1ST RESPONDENT
BETH NJAMBI NJOROGE 2ND RESPONDENT**

*(Being an application for review of the orders made on
3rd October 2016 in Nairobi Civil Appeal No. 73 of 2014)*

RULING

1. Before us is a notice of motion dated October 6, 2016 brought under rule 102(1) of the [Court of Appeal Rules](#), 2010.
2. The application seeks an order for reinstatement of the appeal dated April 10, 2014, which was dismissed for non-attendance on October 6, 2016.



3. The application was listed for hearing through the Go To online platform and, when called out, the appellant / applicants' counsel was present, but the respondents were not represented. The court satisfied itself that the respondents' advocate was duly served.
4. The application is supported by the affidavit of Daniel Mwangi Mugo, the second appellant, who depones: that all the appellants had instructed the firm of RH Wanga & Co Advocates to act for them; that the appeal was listed for hearing on October 3, 2016, and that the hearing notice had been served on the said firm of advocates; that the advocate who was handling the firm had since left the law firm, and that they had no contact with him; that upon making enquiry in the court registry, they learnt that the appeal had been dismissed for non-attendance; that the law firm admitted that the non-attendance was due to an honest mistake; that the appellants are desirous of prosecuting the appeal; that they should not be punished on account of a mistake by the advocates; and that they have since appointed another firm of advocates, who filed a notice of change of advocates on November 2, 2016.
5. We have carefully considered the application, the supporting affidavit and the documents on record. The respondents have not filed a replying affidavit or written submissions in opposition to the application.
6. We note that the appeal was dismissed on October 3, 2016, and that this application was filed on October 6, 2016, which was within 30 days from the date of the dismissal in issue as required under rule 105(3) of the Court of Appeal Rules, 2022.
7. This application was filed by the previous advocates on record, RH Wanga & Co, and the least they should have done is to explain why they did not attend court. However, we note that the appellants acted promptly and filed an application for reinstatement three days following the dismissal of the appeal. Whereas we do not condone the advocates' mistake, we think it would be harsh to lock out the door of justice for the applicants, considering that the application for reinstatement was filed within time.
8. In view of the foregoing, we allow the application dated October 6, 2016 and reinstate the appeal for hearing with no order as to cost.

DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF NOVEMBER, 2022.

H. A. OMONDI

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JUDGE OF APPEAL

DR. K. I. LAIBUTA

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JUDGE OF APPEAL

M. GACHOKA, CIArb, FCIArb

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

