



REPUBLIC OF KENYA



**KENYA LAW**  
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**Gituma & another v Marangu (Environment and Land Appeal  
E047 of 2022) [2024] KEELC 4785 (KLR) (12 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4785 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND APPEAL E047 OF 2022**

**CK NZILI, J  
JUNE 12, 2024**

**BETWEEN**

**SALESIO GITUMA ..... 1<sup>ST</sup> APPELLANT**

**FESTUS MARANGU MBUI ..... 2<sup>ND</sup> APPELLANT**

**AND**

**JOSEPH MWITI MARANGU ..... RESPONDENT**

**RULING**

1. The court, by an application dated 5.4.2024, is asked to set aside dismissal orders dated 18.3.2024 and reinstate the appeal for hearing on merits.
2. The grounds are set on the face of the application and in the supporting affidavit of Kimathi Kiara, advocate, sworn on 5.4.2024. It is averred that when the matter was mentioned on 18.3.2024, counsel acting for the applicants was offline and also attending an eye surgery in Kisumu.
3. The applicants aver that a missing lower court file occasioned the delay, so they could not collect the proceedings despite a letter dated 29.2.2024, seeking for the same.
4. Further, the applicants aver that they were in ELC Court No. 1 when the matter was called out but were now anxious to be heard. They applied without delay, and the dilemma caused by their counsel on record should not be visited upon him.
5. The application is opposed through a replying affidavit sworn by Joseph Mwiti Marangu on 29.4.2024 for lack of credible explanation or reason for failure to prepare the appeal for hearing as directed by the court. Further, the respondent avers that the applicant have lost interest in the prosecution of the appeal and that it was only fair and just that the matter be left to rest.
6. In *Ng'endo vs Sorathia Investment Ltd & 4 others (Civil Appeal E181 of 2019)* (2024) KECA 583 (KLR) (24<sup>th</sup> May 2024) (Judgment), the court observed that one of the considerations on whether to reinstate



or not is delay in applying for review or setting aside. In AG & another vs Phylis Wanjeri Maina & another (2001) eKLR, the court observed that pure delay, even though some reason or reasons may be given for it, will not necessarily amount to a sufficient reason.

7. In Belinda Murai & others vs Amos Wainaina (1978) eKLR, the court said that a mistake was a mistake and that the door of justice is not closed because a mistake has been made by a person of experience who ought to know better.
8. In Charles Alexander Kiai vs Frasih Wangui Gicheru & others (2015) eKLR, the court observed that some of the factors to consider as a period of delay; reasons for the delay; chances of the appeal succeeding, the degree of prejudice and importance of compliance with time limits.
9. In this appeal, the matter came for mention before the court on 4.3.2024 & 18.3.2024 without any appearance by the appellant. The appellant was notified of the mention through an email sent on 4.3.2024 and again on 6.3.2024.
10. In all these two instances, there was no appearance at all. Efforts were also not made to fast-track the appeal. Learned counsel now says that he was indisposed. I shall nevertheless give his clients the benefit of the doubt and reinstate the appeal for hearing on merits.
11. The orders issued on 18.3.2024 are vacated. Lower court file be availed for mention on 17.7.2024.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 12<sup>TH</sup> DAY OF JUNE, 2024**

In presence of

C.A Kananu

Kiara for appellant

Gitari for respondent

**HON. C K NZILI**

**JUDGE**

