



**Silas v Minyori (Environment and Land Appeal E100 of 2021)
[2024] KEELC 4594 (KLR) (6 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4594 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E100 OF 2021**

CK NZILI, J

JUNE 6, 2024

BETWEEN

LAYDIA KURI SILAS APPELLANT

AND

JOHN MWIKA MINYORI RESPONDENT

RULING

1. By application dated 12.3.2024, the court is asked to reinstate the appeal for hearing by enlarging the time within which to file a record of appeal and deem the record of appeal filed as duly filed on time. The grounds are contained on the face of the application and in the supporting affidavit of Lydia Kuri Silas. Briefly, the applicant says that whereas the appeal was admitted for hearing on 11.12.2023 and was ordered to file the record of appeal within 60 days, she had honestly tabulated the 60 days as expiring on 5.3.2024 due to the high court vacation; hence the non-compliance by 11.1.2024.
2. Further, the applicant says that her application dated 13.2.2024 was dismissed on 6.3.2024, on account of not filing the record of appeal by 20.2.2024, as directed. The applicant avers that she was of the view, as advised by her advocates on record, that she would wait first for the reinstatement and file the record of appeal, but unfortunately, the court did not agree with her.
3. The applicant says her record of appeal was actually ready in February 2024, and in the interest of justice, the court should readmit the appeal as per the attached record marked as LK “3”. The applicant avers that she has spent much money on legal fees and the deposit already held in court and, therefore, stands to suffer substantial or untold injustice if the orders sought are not granted.
4. Similarly, the applicant unreservedly apologizes for any mistake in the tabulation of time or the delay in not filing the record of appeal; that the mistake of counsel should not be visited on her; otherwise, the respondent would not be prejudiced in any way. The applicant has attached several annexures including fee receipt payments and the record of appeal.



5. The respondent relies on the grounds of opposition dated 22.3.2024 that:
 - i. The court is *functus officio*.
 - ii. There was no request for the reinstatement; otherwise, the rest of the prayers should fail.
 - iii. The grounds of review have not been met.
 - iv. It was an appeal in disguise.
 - v. It is scandalous, vexatious, and an abuse of the court process.
6. Further, the respondent relies on written submissions dated 6.5.2024, reiterating the above grounds and urging the court to find the application meriting dismissal with costs as per Section 27 of the [Civil Procedure Act](#).
7. What the court is being asked, is to revisit its earlier orders made on 14.3.2024. The grounds are that the applicant had mistakenly tabulated the 60 days to file a record of appeal as expiring on 6.3.2024 and also omitted to file the record of appeal. The applicant says that she had prepared a record of appeal by February 2024, was ready to file it, and, if the appeal is reinstated, she is ready to prosecute it.
8. The applicant avers that the delay was not intentional, deliberate, or inordinate. Further, the applicant says that she had complied with earlier orders on security, and therefore, the prejudice of not hearing her appeal on merits would be more than the prejudice likely to face the respondent if the reinstatement was made.
9. In [West Mont Holdings SDN BHD vs CBR](#) (Civil Application No. 10 (E007) of 2021 (2021) KESC 3 (KLR) (8th October 2021), the court observed that the right to access justice and the question of security of costs standing in between that right as enshrined in Articles 48, 50 & 159 of the [Constitution](#), was a stringent qualification to a litigants fiducial right to justice. The court granted leave on account of public interest in order to settle the question of security of costs as a condition precedent to hearing a party.
10. In [John Nabashon Mwangi vs Kenya Finance Bank Ltd \(in liquidation\)](#) 2015) eKLR, the court observed that the right to be heard was fundamental and the “Sword of Dances” should only draw out blood where it is essential and that on whether to reinstate or not, the court should consider whether there are reasonable grounds to reinstate and the prejudice to the opposite party.
11. In [Belinda Murai & others vs Amos Wainaina](#) (1979) eKLR, the court said a mistake was a mistake, including a blunder of law. In [Philip Chemwolo & another vs Augustine Kubende](#) (1986) eKLR, the court said a broad equity approach should unless fraud or intention to overreach was there, no error or default cannot be put right by payment of cost.
12. In this application, the applicant has owned up to the mistake, which she highly regrets, and remedied her mistakes by annexing the record of appeal as a show of readiness to prosecute the appeal. The contents of the affidavit owning up to the mistakes, the readiness of the applicant, the security held by the lower court, which is yet to be released, and the reasons for earlier non-compliance have not been controverted by way of a replying affidavit.
13. The respondent has not expressed any reservations or the prejudice he would suffer, if reinstatement and an extension of time are allowed, which cannot be remedied by way of costs. The court still holds up the security for costs. The applicant has not been blamed for inordinate delay, endless



procrastination of the appeal and for being out to derail the cause of justice. The appeal was struck out for non-compliance.

14. In *Kiumiru vs M'Mukaria & others* ELC. Misc No. E022 of (2023) (2023) KEELC 22201 (KLR) (December 14, 2023) Ruling, the court observed that the path of review or appeal was available to the applicant, and the filing of a fresh application would create an unprecedented legal absurdity. Looking at the totality of the circumstances, I find that this court is not functus officio. The application was also brought without an unreasonable delay.
15. The upshot is that I allow the application. Throw away costs of Kshs.30,000/= shall be paid to the applicant. Parties to canvass the appeal by way of written submissions to be filed within thirty days from the date hereof. Judgment on 17.7.2024.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 6TH DAY OF JUNE, 2024

HON. C K NZILI

JUDGE

In presence of

C.A Kananu

Parties

Kitheka for the respondent

Maina for Ndubi for the applicant

