



**Murungi v Ng'entu (Environment and Land Appeal 78 of 2022)
[2024] KEELC 6064 (KLR) (18 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6064 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL 78 OF 2022
CK NZILI, J
SEPTEMBER 18, 2024**

BETWEEN

LAWRENCE MURUNGI APPELLANT

AND

BONFACE NG'ENTU RESPONDENT

RULING

1. The court, by an application dated 7.6.2024, is asked to re-admit the appeal for hearing on merits and for the deputy registrar to be directed to call for the lower court file through the executive officer of the court appealed against. The applicant relies on the reasons on the face of the application and in the supporting affidavit of Gregory Mutuma Muthuri Advocate.
2. It is averred that during the mention on 18.3.2024, the executive officer of the lower court failed to show cause or avail the lower court file. However, the court took the view that the appellant was indolent, yet the fault was not his. The applicant states that he has been willing to prosecute his appeal and to deny him that chance offends the right to fair hearing and natural justice. He urges the court to grant the reliefs sought; otherwise, there will be no prejudice occasioned to the respondent if the appeal is reinstated.
3. The respondent opposes the application through a replying affidavit of Gatari Ringera, advocate, sworn on 19.6.2024 on the basis that no good reasons have been given to warrant the issuance of the prayers sought or prosecute the appeal despite previously extended extreme indulgence to the applicant. The respondent urges that litigation must come to an end.
4. A court has the discretion to reinstate an appeal that has been struck out on such terms as are just. Similarly, a court has the power to strike out an appeal for non-compliance. In *Silas v Minyori* ELC Appeal E10 of 2021 (2024) KEELC 4594 (KLR) (6th June 2024) Ruling, the court cited *John Nabashon Mwangi v Kenya Finance Bank Ltd* (in liquidation) (2015) eKLR, on the right to be heard



as fundamental and that the sword of damacles should only draw out blood where it is essential and that on whether to reinstate or not there should be reasonable grounds and a consideration of the prejudice to the opposite party.

5. In this application the applicant blames the lower court for not availing the lower court file. Evidence of service of the notice to show cause to the executive officer dated 7.3.2024 is lacking. The letter seeking the forwarding of the lower court file at the instance of the applicant. Since 2022, there is no evidence that the applicant has made efforts to seek for the lower court proceedings for him to aver that he has been ready to prosecute his appeal. Between 18.3.2024 and 7.6.2024, the delay to seek reinstatement is not explained.
6. Be that as it may the respondent has not expressed any prejudice or dissipation of the subject matter of the appeal if reinstatement is ordered. I grant the applicant the benefit of the doubt and reinstate the appeal for hearing. Throw away costs of Kshs.20,000/= to be paid to the respondent within 14 days from the date hereof. Mention on 25.9.2024.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 18th DAY OF SEPTEMBER, 2024

In presence of

C.A Kananu

Miss Onyango holding brief for Mutuma for the appellant

HON. C K NZILI

JUDGE

