



Vincent Migaliza Kenyagi v Kendi & another (Environment and Land Appeal E007 of 2023) [2024] KEELC 13401 (KLR) (14 November 2024) (Ruling)

Neutral citation: [2024] KEELC 13401 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
ENVIRONMENT AND LAND APPEAL E007 OF 2023**

**E ASATI, J
NOVEMBER 14, 2024**

BETWEEN

VINCENT MIGALIZA KENYAGI APPLICANT

AND

PAUL OSIDE KENDI 1ST RESPONDENT

ELIZABETH MMOJI KENDI (ON BEHALF OF THE ESTATE OF SAMUEL MAHUNYA OKELLO) 2ND RESPONDENT

RULING

1. This ruling is in respect of the Notice of Motion application dated 12/8/2024 filed by the appellant. The substantive order sought is that the appeal herein be reinstated and be heard on priority basis.
2. The application was opposed vide the contents of the Replying Affidavit sworn on 17th September 2024.
3. It was submitted on behalf of the appellant/applicant that Order 42 Rule 21 gives the court discretion to reinstate the appeal.
4. The reason tendered by the applicant for failure to prosecute the appeal thereby resulting in the appeal being dismissed for want of prosecution is that his advocate kept him in the dark over prosecution of the appeal.
5. The Respondent's position is that the application has been brought in bad faith, that the same is frivolous and an afterthought and an abuse of the court process. That after obtaining the interim orders the applicant failed to attend court. That the matter came up before court but the applicant failed to attend in spite of being properly served.
6. I have considered the application and the grounds in opposition thereof. I have read and considered the written submissions filed by the parties.



7. It is true that the court had given the appellant sufficient time to prosecute the appeal before dismissing it for want of prosecution.
8. But purely in the interest of just, the court hereby exercises its discretion under Order 42 Rule 21 in favour of the appellant to give him a last chance to prosecute the appeal on the conditions set out herein. The Respondents will be compensated by way of costs.
9. The application is therefore hereby allowed in the following terms: -
 - a. This court's order dated 7/5/2024 dismissing the appeal is hereby vacated and set aside and the appeal reinstated to hearing.
 - b. The appellant to file and serve Record of Appeal within 45 days hereof failing which the appeal shall stand dismissed with costs to the Respondent.
 - c. Throw away costs of Kshs 15,000/= to the Respondent
 - d. Matter be mention on 12th February 2025 for directions on the appeal.

Orders accordingly.

RULING, DATED AND SIGNED AT VIHIGA, READ VIRTUALLY THIS 14TH DAY OF NOVEMBER 2024 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Ajevi- Court Assistant.

for the Appellant/Applicant.

for the Respondent.

