



**Ndunda v Ndunda & another (Environment and Land Appeal  
31 of 2019) [2024] KEELC 13800 (KLR) (16 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13800 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI  
ENVIRONMENT AND LAND APPEAL 31 OF 2019  
TW MURIGI, J  
DECEMBER 16, 2024**

**BETWEEN**

**VERONICA MWIKALI NDUNDA ..... APPELLANT**

**AND**

**PETER NGEKE NDUNDA ..... 1<sup>ST</sup> RESPONDENT**

**JOHN MUTHOKA NDUNDA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. By a Memorandum of Appeal dated 4<sup>th</sup> December 2019, the Appellant appealed against the ruling of Hon. C.A Mayamba delivered on 15<sup>th</sup> November, 2019 in Kilungu PMCC No. 6 of 2019 and set out six grounds of Appeal.
2. This matter came up for directions on 26<sup>th</sup> February, 2024 when Mr P.M Mutuku learned Counsel for the Appellant informed the court that the Appellant, who is the mother to the Respondents herein, had passed away. Mr Mwariri, Learned Counsel for the Respondents made an oral application that the appeal be dismissed for want of prosecution. Mr Mwariri argued that the Appellant has not taken any steps to prosecute the Appeal since the year 2020 in addition to the Appeal having abated.
3. On 24<sup>th</sup> November 2022, the court issued a Notice to show cause why the Appeal should not be dismissed for want of prosecution. When the NTSC came up for hearing on 5<sup>th</sup> December, 2022, Mr P.M Mutuku requested for time for the lower court record be availed in order to aid in prosecution of the appeal.
4. On 16<sup>th</sup> October, 2023, this matter was before the Deputy Registrar for directions when Counsel for the Respondents informed the court that the Appellant had passed away which was confirmed by Mr P.M Mutuku on 26<sup>th</sup> February, 2024 when the oral application herein was made. Mr Mutuku did not avail the Appellant's death certificate despite being directed to adduce the same.



## Analysis And Determination

5. Having considered the oral application and the response thereto, the only issue that arises for determination is whether the appeal herein should be dismissed for want of prosecution.
6. The legal framework on dismissal of suits for want of prosecution is found in Order 17 Rule 2(1) of the Civil Procedure Rules which provides as follows:-

“In any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.
7. Further Order 17 Rule 2(3) of the Civil Procedure Rules states that:-

“Any party to the suit may apply for its dismissal as provided in sub-rule 1”.
8. Order 42 Rule 35 of the Civil Procedure Rules, 2010 provides as follows:
  - i. Unless within three months after the giving of directions under rule 13 the appeal shall have been set down for hearing by the appellant, the respondent shall be at liberty either to set down the appeal for hearing or to apply by summons for its dismissal for want of prosecution.
  - ii. If, within one year after the service of the memorandum of appeal, the appeal shall not have been set down for hearing, the registrar shall on notice to the parties list the appeal before a judge in chambers for dismissal.
9. In *James Wanyoike & another v Rosebella Jebet Bor* [2017] eKLR, the court aptly held as follows: -

“Both Order 17 Rule 2 (3) and Order 42 Rule 35 (2) in my view give effect to the overriding objective which is the just, expeditious, proportionate and affordable resolution of civil disputes. They provide avenues through which idle litigation is weeded out of the court system. Their import is to ensure that parties either keep their litigation alive or get them removed. While Order 17 places the responsibility of flagging out such cases on the parties, Order 42 Rule 35 (2) places the responsibility on the court through its duly appointed Registrars.”
10. Under Section 1A and 1B, the court has inherent jurisdiction to ensure that matters are heard expeditiously to prevent abuse of its process.
11. The record shows that the Appellant filed the Memorandum of appeal on 5<sup>th</sup> December, 2019 while the record of appeal was filed on 11<sup>th</sup> March, 2022. The record also shows that the parties were served with a notice to show cause why the Appeal should not be dismissed for want of prosecution dated 24/11/2022. The Appellant has not taken any steps to set down the appeal for hearing since 24/11/2022. Indeed, it is crystal clear from the record that the Appellant has not taken any steps to set the appeal down for hearing. The delay of almost 5 years in prosecuting this Appeal is in my view inordinate and inexcusable.
12. In the circumstances the application by the Respondent is hereby allowed as prayed.
13. In the end the appeal herein is hereby dismissed. As the parties herein are closely related, I order that each party to bear its own cost.

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**HON. T. MURIGI**

**JUDGE**

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 16TH DAY OF  
DECEMBER, 2024.**

In The Presence Of:

Parties absent

Court assistant Steve

