



REPUBLIC OF KENYA



KENYA LAW
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**Kabucho v Gathiongo (Civil Appeal E39 of 2024)
[2025] KEHC 9635 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9635 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CIVIL APPEAL E39 OF 2024**

**LN MUTENDE, J
JUNE 30, 2025**

BETWEEN

JOHN KAHAWAI KABUCHO APPELLANT

AND

JOHN NJUGUNA GATHIONGO RESPONDENT

RULING

1. The substratum of this matter is that judgment was entered for the Applicant on 1st July, 2021. Subsequently a Bill of Taxation was filed which came up for taxation on 4th May, 2023, and later on 22nd June, 2023, but the Applicant did not make any appearance hence the Bill of Taxation was dismissed.
2. Dissatisfied with the order of the court the Applicant through a Notice of Motion dated 14th August, 2023, sought to have the Bill of Costs reinstated; and, by a ruling dated 2nd May, 2024, the court delivered itself thus;
 - I. The dismissal orders dated 22nd June, 2022, are hereby set aside; and the Applicant's bill of taxation dated 22nd February, 2022, is reinstated.
 - II. The Applicant shall undertake to prosecute the same within 60 days from the date of this ruling failure to which the dismissal shall stand.
 - III. The Applicant shall bear the costs of this application in any event.
3. Through an application dated 9th January, 2025, the Applicant seeks grant of an order reinstating the Bill of Costs dated 22nd February, 2022 following dismissal orders which were effective within 60 days of the ruling of the court as from 2nd May, 2024.
4. The application is premised on grounds that when the matter came up for taxation before Hon. Atamba Lynn Mweri on 31st July, 2024, in Nyandarua, the court had no jurisdiction hence it was



retransferred to Nyahururu Court; the matter had been booked in July 2024 for taxation on 31st July, 2024, before Deputy Registrar in Nyandarua since there were no other available dates and also purposely for transfer.

5. That the transfer is administrative and the Applicant had no control whatsoever. That the confusion or oversight of movement of files from one station to another should not be visited on an innocent Applicant/Litigant. That the Applicant stands to suffer irreparable damage as the Bill of Taxation touches on the finality of the suit and he desires to enjoy his fruits of labour for the last 20 years in court.
6. In reply thereto, it is urged that the Applicant is not entitled to orders sought as he is guilty of laches and gross delay which has not been explained. That the Applicant's advocates were present in court when the ruling on 2nd May, 2024, was delivered. That the ruling reinstated the Bill of Costs dated 22nd February, 2022, after having been dismissed for want of prosecution.
7. That the Applicant abused the court's clemency by failing to action the said Bill of Costs within 60 days and there is no evidence in writing that the Applicant made an effort to have the impugned Bill of Costs fixed for hearing.
8. I have considered the application, affidavits in support and opposition and rival arguments. The test in reinstatement of a matter depends on circumstances of each case. In *Ivita v Kyumbi* [1984] KLR 441, Chesoni J. (as he then was) held that;

“The test applied by the courts in an application for dismissal of a suit for want of prosecution is whether the delay is prolonged and inexcusable, and if it is whether justice can be done despite the delay. Thus, even if the delay is prolonged, if the court is satisfied with the plaintiff's excuse for the delay and that justice can still be done to the parties, the action will not be dismissed but it will order that it be set down for hearing at the earliest time. It is a matter in the discretion of the court”
9. Looking at the chronology of events, the file was transferred to Nyandarua from Nyahururu on 18th September, 2023. The decision of the court granting the orders of reinstatement of the Bill of Taxation dated 22nd February, 2022 was on 2nd May, 2024. It was delivered by the Nyandarua High Court.
10. The Applicant was required to prosecute the Bill of Taxation within 60 days.
11. Notably, the Applicant's counsel did appear ex-parte per the record after 49 days, on the June 21, 2024 when a mention date was given. Parties were to appear before the Deputy Registrar on July 31, 2024. Time within which leave granted was operational lapsed on July 2, 2024. The file was subsequently transferred to Nyahururu on October 30, 2024, and the application for reinstatement was made on March 3, 2025.
12. The Applicant blames the court for delay due to the intervening circumstances that transpired.
13. It has been urged that if the order to be granted is not favourable to the Applicant, it will be prejudicial to him as he has been in the battlefield for the last 19 years and his final success is to be snatched from him.
14. It is evident that there was some indolence on the part of the Applicant who acted after 49 days had lapsed. To avoid miscarriage of justice I do take into consideration the eleven days that were still pending. Accordingly, I do reinstate the Bill of taxation of Costs by extending time within which it shall be prosecuted, within 21 days of today, the June 30, 2025.
15. In default, the dismissal orders to remain in force.



16. Costs of the application shall be borne by the Applicant.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30TH DAY OF JUNE, 2025.

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L.N. MUTENDE

JUDGE

