



REPUBLIC OF KENYA



KENYA LAW
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**Ibrahim & another v Muchiri (Civil Appeal 51 of 2023)
[2025] KEHC 9232 (KLR) (Civ) (27 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9232 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA**

CIVIL

CIVIL APPEAL 51 OF 2023

KW KIARIE, J

JUNE 27, 2025

BETWEEN

BASHIR SHARIF IBRAHIM 1ST APPELLANT

KENNEDY MACHARIA 2ND APPELLANT

AND

JOSPHAT MUCHIRI RESPONDENT

RULING

1. The respondent/applicant moved the court through Chamber Summons dated 28th March, 2025. It was brought under sections 1A,1B and 3A of the *Civil Procedure Act*, Order 42 Rule 35 (1) of the Civil Procedure Rules, and Article 159 (2) of *the Constitution* of Kenya. The applicant is seeking the following orders:
 - a. That the Honourable court be pleased to dismiss the appellants/respondents' appeal for want of prosecution.
 - b. That the costs of this application be provided for.
2. The application was premised on the following grounds:
 - a. The appellants herein instituted an appeal against the judgment of S N Mwangi in Nyahururu CMCC No. 114 of 2016 on the 22nd of June 2022, and a record of appeal on the 25th of November 2022, 5 months later.
 - b. That on the 27th of September 2023, the appellants did not appear but the court directed that the appeal be prosecuted by way of written submissions. Each party was given 21 days to file



submissions, starting with the appellants, and the matter was slated for mention or highlighting of submissions on the 24th of January, 2024.

- c. That on the same day, the respondent served upon the appellants a letter of mention notice informing them of the same.
 - d. On January 24, 2024, the defendant did not file and serve a copy of their submission upon the respondent, and they also did not appear. This became the trend when the matter was fixed for mention to confirm submission filing on February 12, 2024.
 - e. On the 23rd of September 2024, again in the absence of the appellants, the court issued fresh directions that the parties file their submissions afresh within 60 days each, starting with the appellants. However, the appellants have neither acted on the same nor subsequently attended court for mention on the 16th of December 2024, 17th of February 2025, and 18th of March 2025, despite having been served with a mention notice.
 - f. More than three months have elapsed since the court issued directions on the prosecution of this appeal. Still, the appellants/respondents have not taken steps to progress their appeal by ensuring that a hearing highlighting submissions takes place. Yet, the respondent/applicant has been attending court sessions religiously.
 - g. The appellants/respondents' inertia contradicts the court's overriding objectives, especially those regarding the efficient and timely disposal of the court's business.
 - h. The respondent/appellants are also called upon to assist this honourable court in furthering the overriding objectives by participating in this court's processes and complying with the directions.
 - i. As a result, the respondent/applicant has been inconvenienced since his right to enjoy the fruits of the judgments in the lower court has been unduly delayed.
 - j. The appellants/respondents herein will not be prejudiced if this application is allowed since they have no interests in prosecuting this appeal.
 - k. It will only serve the interest of justice to allow this application for the proper dispensation of justice
3. The respondent opposed the application on the following grounds:
- a. The application lacks merit.
 - b. They lost track of the matter owing to the transfer from the High Court sitting at Nyahururu.
4. Order 42 Rule 35 of the Civil Procedure Rules provides as follows:
1. 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.
 - (2) 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.
5. On 27 September 2023, the court directed that this appeal be prosecuted through written submissions. Each party was given 21 days to file their submissions. The appellants were required to file and serve their submissions on the respondent. To date, they have not complied.



6. Although the appellants asserted that they had lost track of this appeal, that is untrue. The affidavits of service suggest otherwise. Their response to this application was lodged on June 17, 2025. This indicates a lack of seriousness regarding this matter. The application is warranted. The appeal is dismissed for want of prosecution with costs.

DELIVERED AND SIGNED AT NYANDARUA THIS 27TH DAY OF JUNE 2025

KIARIE WAWERU KIARIE

JUDGE.

