



REPUBLIC OF KENYA



**Bimenyima v Reyhan Petroleum Limited (Civil Appeal 020 of 2023)
[2025] KEHC 11560 (KLR) (Commercial and Tax) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11560 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL APPEAL 020 OF 2023**

PM MULWA, J

JULY 31, 2025

BETWEEN

PHILIPPE BIMENYIMA APPELLANT

AND

REYHAN PETROLEUM LIMITED RESPONDENT

RULING

1. The Court is called upon to make a ruling in respect of two applications.
2. The first application is the Notice of Motion dated 8th November 2024 brought under Order 42(6), Order 45 and Order 51 of the *Civil Procedure Rules*. The Appellant seeks to set aside this Court's order dated 4th April 2024 dismissing his appeal and all consequential orders made thereto. He also prays that the appeal be reinstated.
3. The main ground founding the first application is that no notice to show cause was issued to the appellant before the dismissal of the appeal and that he only learnt of the dismissal through the e-filing portal under the originally filed case number HCCOMMCTA E026 of 2023. In the supporting affidavit sworn on 8th November 2024 by the Appellant, it is deposed that the Appellant is still keen to prosecuting his appeal which has high chances of success.
4. The second application is by Notice of Motion dated 29th November 2024 and is brought under Order 42 rules 1 and 6, and Order 51 of the *Civil Procedure Rules*. The Appellant prays for orders of stay of execution of the warrants dated 15th October 2024 pending the hearing and determination of the first application dated 8th November 2024. It is averred that there is imminent threat of execution of attached motor vehicles and a proclamation notice has been issued.



5. The Respondent, through its director Alinoor Abdi Elmi swore a replying affidavit on 18th December 2024 in response to the two applications. He asserted that the Applicant is guilty of an unexplained delay having brought the application for reinstatement of the appeal more than 6 months after the same was dismissed, a clear indication that he never was interested in prosecuting the appeal. That at all times the Appellant was properly served with notices but chose not to appear in court, or even take steps to compile, file and serve the record of appeal.
6. Further, it was averred by the Respondent that the Applicant had not met the threshold for stay of execution pending appeal as provided under Order 42 rules 6 and 7 of the *Civil Procedure Rules*.

Analysis and determination

7. I have considered the two applications, rival affidavits and submissions filed. For good order, I will first consider the application dated 8th November 2024 the reason being that the finding therein will impact, or even determine, the latter application dated 29th November 2024.
8. For the motion dated 8th November 2024, there is no doubt that this Court has discretion to set aside an order dismissing an appeal for want of prosecution. The only issues for determination, therefore would be whether the circumstances of this case warrant the exercise of that discretion and who should bear the costs of the application.
9. A brief background of this matter will suffice. The appellants filed the appeal herein vide a memorandum of appeal dated 29th June 2023 to challenge the ruling by Hon. J.W. Munene in Nairobi SCCC No. 2204 of 2023. On 20th July 2023 the initial application dated 29th June 2023 was fixed for directions on 24th July 2023. In all court attendances scheduled up to 4th April 2024 the only appearance was by the Respondent.
10. Indeed, on 13th February 2024, learned counsel for the Respondent Mr. Lutukai orally applied that the appeal be dismissed as there had been no appearance by either the Appellant or his Advocates. This Court instead issued a notice to show cause for 4th April 2024.
11. On 4th April 2024, the Court having been notified that the notice to show cause (NTSC) had been served and a return of service filed dismissed the appeal for want of prosecution.
12. The appellant's application was hinged on none service of notices and especially the NTSC. I have revisited the court record and the CTS and I have noted that there is lack of clarity as to the description of the appeal case number. The case was commenced as HCCOMMCTA No. E026 of 2023, but later changed to HCCOMMA No. 020 of 2023. That change was directed by the Court.
13. I am persuaded to agree with the Appellant/applicant that when that change of description of the case was made, his counsel were not notified by the Deputy Registrar as directed. Having further looked at the affidavit of service which the court relied on 4th April 2024 to confirm service of the NTSC, I note that the same referred to a mention notice dated 22nd March 2024 which was not attached. It is therefore not easy to know the contents which the said notice allegedly communicated to the Advocates for the Appellant. Again, there is no evidence that the court registry issued the NTSC to the Appellant or his advocates.
14. The failure to issue notices on the case progression upon the Appellant may explain the lengthy delay in filing the instant application for reinstatement of the appeal. I agree with the submissions by counsel for the Appellant that he had the intention to prosecute the appeal herein. On the issue of the application dated 29th November 2024 for stay of execution orders, I find that the same must fail as it was anchored on an appeal which was by the non-existent. The Appellant though is at liberty to apply.



15. In light of the foregoing, I find there is merit in the Appellant's application dated 8th November 2024 and allow the same in the following terms.

- i. The orders issued on 4th April 2024 are hereby set aside and the appeal herein is re-instated.
- ii. The record of appeal to be filed and served within 45 days from the date of this ruling failing which the appeal will stand dismissed.
- iii. Costs of the application will abide the main appeal.

Orders accordingly.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 31ST DAY OF JULY 2025.

PETER M. MULWA

JUDGE

In the presence of:

Ms. Nyariki h/b for Mr. Nyaberi for Appellant/Applicant

N/A for Respondent

Court Assistant: Carlos

