



**Meeni v Cimba & 2 others (Environment and Land Appeal  
E003 of 2020) [2023] KEELC 17588 (KLR) (31 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17588 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT CHUKA  
ENVIRONMENT AND LAND APPEAL E003 OF 2020**

**CK YANO, J**

**MAY 31, 2023**

**BETWEEN**

**ROBERT MUKEMBU MEENI ..... APPELLANT**

**AND**

**MUTUGI CIMBA ..... 1<sup>ST</sup> RESPONDENT**

**NYAGA KIIRA ..... 2<sup>ND</sup> RESPONDENT**

**MUGIIRA KIRIA ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The application for determination is the notice of motion dated October 1, 2021 and amended on October 9, 2021 in which the applicant seeks leave to file an appeal out of time against the judgment delivered by this court on July 26, 2021 and to file and serve the notice of appeal and record of appeal outside the statutory period. The application is grounded on the fact that the judgment subject of the intended appeal was delivered on July 26, 2021 wherein the appellant's appeal was dismissed. That the applicant was let down by this advocate who did not inform him when the judgment was delivered and advise him of the correct path to follow after the appeal was dismissed. The applicant avers that the intended appeal has high chances of success and that the respondents will not be prejudiced if the orders sought herein are granted.
2. The application is supported by the affidavit of Robert Mukembu Meenu, the applicant sworn on December 9, 2021 in which he has deponed that the firm of J. G Gitonga & Co Advocates is on record for him in this matter and that the applicant has instructed the firm of B.G Kariuki & Co Advocates to represent him in place of J. G Gitonga & Co Advocates.
3. The applicant avers that on May 25, 2021 they appeared in court for mention to confirm filing of submissions and the matter was slated for delivery on judgment on July 21, 2021. The applicant avers that on July 21, 2021, he attended court and was informed at the registry that the court was not sitting



since the judge was attending at three judge bench hearing of the Lake Turkana Wind Project matter. That he was referred to the notice board where he found a notice indicating that the judge was not sitting from July 19, 2021 up to July 23, 2021 and that judgments scheduled for delivery on July 13, 2021 would be delivered on July 26, 2021.

4. The applicant avers that he visited his advocate's office who confirmed that they were aware of the said notice and promised to inform the applicant when the judgment would be delivered since the notice did not indicate the date when the judgment scheduled for July 21, 2021 would be delivered. The applicant states that he did not receive any communication from his advocates office for close to two months and decided to visit the court registry where he learnt that judgment was delivered on July 26, 2021 and the appeal was dismissed. That he contacted his advocate who informed him that the said judgment was delivered in their absence since they were never informed of the date of delivery and that they had applied for copies of proceedings and judgment. That on September 24, 2021, the applicant's advocate handed him a copy of the judgment but informed him that they were not prepared to appeal, hence the failure to file a notice of appeal and record of appeal as required by the rules. The applicant states that he was let down by his advocates who did not follow up with the court to find out when the judgment would be delivered and advise him on what to do after the appeal was dismissed. The applicant argues that the mistake of his former advocate should not be visited on him.
5. The application is opposed by the 1<sup>st</sup> respondent through grounds of opposition dated December 15, 2021 on the following grounds:
  1. That the said application dated December 9, 2021 lacks merit, is bad in law and fatally defective for the following reasons:
    - a. The firm of B.G Kariuki & Co Advocates are improperly on record contrary to the provisions of order 9 rule 9 of the [Civil Procedure Rules](#).
    - b. The purported amendment of the application dated October 1, 2021 by the application dated December 9, 2021 contravenes order 8 rule 3 of the [Civil Procedures, 2010](#).
    - c. The reasons advanced by the applicant for the delay in lodging the notice of appeal and the record of appeal within the stipulated time are not plausible or excusable.
    - d. The applicant has not demonstrated that he has a strong appeal with any chance of success.
6. The application was canvassed by way of written submissions. The applicant filed his submissions dated February 24, 2023 on February 27, 2023 through the firm of B.G Kariuki & Co Advocates while the 1<sup>st</sup> respondent's submissions are dated April 28, 2022 and filed on even date.
7. I have considered the application, the affidavit in support, the grounds of opposition and the submissions filed. In this matter, there is no dispute that the applicant was being represented by the firm of J.G Gitonga & Co Advocates. There is also no dispute that judgment was delivered on July 26, 2021. The applicant filed the application dated October 1, 2021 and amended on December 9, 2021 through the firm of B.G Kariuki & Co Advocates.
8. Order 9 rule 9 and 10 of the [Civil Procedure Rules](#) provide as follows:
  - "9. When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such



change or intention to act in person shall not be effected without an order of the court:-

- a. Upon an application with notice to all the parties.
- b. Upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.

10. An application under rule 9 may be combined with other prayers provided the question of change of advocate or party intending to act in person shall be determined first.”

9. In this case, it is clear that no consent had been filed between messrs J. G Gitonga & Co Advocates and messrs B. G. Kariuki & Co Advocates at November 2, 2021 when the application was filed. There is a consent filed on December 20, 2021 signed by the said firms. It is my understanding that the provision of order 9 rule 9 is that regardless of the mode adopted in changing an advocate, there must be an order of the court. In this case, the original application was filed on November 2, 2021. The consent between the outgoing advocate and the incoming advocate was only filed on December 20, 2021 and there is no prayer seeking leave of the court for the incoming advocate to be allowed to come on record. In my view, the filing of the consent after the application had been filed could not cure the application dated October 1, 2021 and filed on October 2, 2021. In this case, there is no court order endorsing the change of advocate and therefore the firm of B. G Kariuki & Co Advocates is improperly on record for the applicant. It is clear that the application dated December 9, 2021 is an amendment of the earlier one dated October 1, 2021. Moreover, the amendment was effected without leave of the court as provided under order 8 rule 3 of the *Civil Procedure Rules*. It follows therefore that that application is incompetent and fatally defective as it was filed without authority and amended without leave of the court as required by order 9 rule 9 of the *Civil Procedure Rules*.
10. The upshot is that the application dated December 9, 2021 is incompetent and fatally defective and the same is hereby struck out with costs to the 1<sup>st</sup> respondent.
11. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 31<sup>ST</sup> DAY OF MAY, 2023.**

**In the presence of:**

CA: Martha

Muriithi for 1<sup>st</sup> Respondent

Ms. Mbubuya for Appellant

N/A for 2<sup>nd</sup> & 3<sup>rd</sup> Respondents

**C. K. YANO,**

**JUDGE.**

