



**Bunde v Osoro & 2 others (Environment and Land Appeal
E017 of 2022) [2023] KEELC 17787 (KLR) (29 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17787 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT AND LAND APPEAL E017 OF 2022
GMA ONGONDO, J
MAY 29, 2023**

BETWEEN

JOSEPH ODHIAMBO BUNDE APPELLANT

AND

JOHN PHELIX OPIYO OSORO 1ST RESPONDENT

OMONDI OSORO 2ND RESPONDENT

ODONGO OSORO 3RD RESPONDENT

*(Being an appeal from decree in the original Land case No. 5 of 2020 at
the Chief Magistrate's Court at HomaBay issued on the 7th April 2022)*

RULING

1. This ruling is in regard to an application made on May 23, 2023 by Mr. R. Ochieng counsel for the respondent to have this appeal dismissed with costs.
2. The Respondents' complaint is that the appellant's counsel filed and served record of appeal outside the time lines set by the court on March 2, 2023. That the record was filed on April 13, 2023 in line with this court's orders of March 2, 2023.
3. Further, the respondent laments that the parties entered into a consent order which is not a mere technicality. That this court is not seized of the jurisdiction to set aside or vary the said orders which are final in nature.
4. Mr. Nyakwamba learned counsel for the appellant opposed the application based on the grounds; *inter alia*;
 - a. Mr. Migele learned counsel who held his brief on March 2, 2023, informed him that the court directed that the record of appeal be filed within thirty days from that date.



- b. This is a land matter.
 - c. It would be prejudicial if the appellant's appeal is dismissed and not heard on merit.
 - d. Article 159(2) (d) of *the constitution of Kenya, 2010* provides for administration of justice without undue regard to procedural technicalities.
5. I have duly considered the application in entirety. So, is the same meritorious?
 6. Clearly, the proceedings of March 2, 2023 herein show that the appellant's counsel was given thirty days from that date to file and serve record of appeal. That the appeal to be dismissed in the event of failure thereof.
 7. This court is guided by, *inter alia*, Articles 159(2) (b) and (d) of *the Constitution of Kenya 2020* and sections 3 and 19 of the *Environment and Land Court Act, 2015* (2011) on administration of justice.
 8. It is trite that the right to be heard before an adverse decision is taken against a person is fundamental and permeates our entire justice system; see *James Kanyिता Nderitu and another -versus- Marios Philotas Ghikas and another* (2016) eKLR.
 9. In the foregone, the appellant is entitled to an unlimited right to be heard in this appeal which was initiated by memorandum of appeal dated May 6, 2023 contained in the record of appeal filed herein. The lapse to file the record of appeal within the set timelines is excusable in the circumstances.
 10. Accordingly, the respondent's application for dismissal of this appeal is hereby disallowed with costs to abide the outcome of the instant appeal.
 11. It is so ordered.

DELIVERED, DATED AND SIGNED AT HOMABAY THIS 29TH DAY OF MAY 2023

G.M.A ONG'ONDO

JUDGE

PRESENT

1. Mr. Nyakwamba learned counsel for the appellant.
2. Mr. R. Ochieng learned counsel for the respondent.

