



REPUBLIC OF KENYA



**Musyimi & another v Nzioka & another (Civil Appeal
E007 of 2020) [2022] KEHC 3044 (KLR) (22 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 3044 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CIVIL APPEAL E007 OF 2020**

**GMA DULU, J
JUNE 22, 2022**

BETWEEN

JACQUILINE KAMBUA MUSYIMI 1ST APPLICANT

LADHA COACH 2ND APPLICANT

AND

LYDIA KAMENE NZIOKA 1ST RESPONDENT

AINU SHAMSI 2ND RESPONDENT

RULING

1. In this matter where a Memorandum of Appeal was filed on September 2, 2020, and an application for stay of execution of judgment or decree filed on the same date; a replying affidavit sworn by Lydia Kamene Nzioka (1st respondent) on October 7, 2020 was filed by Apollo Muinde & Partners for the same 1st respondent.
2. In addition, the same counsel for the respondent filed a Preliminary Objection on behalf of the same 1st respondent dated April 19, 2021 and filed by on June 9, 2021.
3. This ruling relates to the above Preliminary Objection, which is in the following terms –
 1. That the appeal herein was filed out of time and without leave of the court.
 2. That the appeal be and is hereby struck out with costs to the 1st respondent.
4. Though both the 1st respondent's and appellants' counsel were given a chance by this court to file written submissions to the Preliminary Objection, only the 1st respondent's counsel filed written submissions. Even after several adjournments were granted by the court, the appellants' counsel Ms. Kimondo Gachoka & Company did not file written submissions.



5. The thrust of the 1st respondent's counsel submissions in support of the Preliminary Objection is that judgment was delivered by the trial magistrate on July 21, 2020, while the appeal and application for stay of execution herein were filed on September 2, 2020, outside the prescribed statutory time of 30 days for filing an appeal in a civil matter emanating from the magistrate's court, without leave of this court.
6. Indeed, under section 79G of the *Civil Procedure Act* (Cap.21), appeals from the magistrates courts to the High Court are to be filed within 30 days, unless extension of time to file appeal has been granted by the High Court.
7. In this matter the judgment of the trial court herein having been delivered on July 21, 2020, the appeal should have been filed latest by August 21, 2020 assuming that the last day was a weekend. Obviously, September 2, 2020 when appeal was filed, was far beyond the statutory time prescribed for filing of the appeal herein.
8. Having so far not been told that extension of time for filing appeal was granted by this court, I find that there is no valid appeal filed herein. Consequently, both the appeal and application filed herein are incompetent and cannot stand and have to be struck out.
9. I thus uphold the Preliminary Objection of the 1st respondent herein and order as follows –
 1. That the appeal and the application herein were both filed out of time without leave of the court.
 2. The appeal and application herein are both hereby struck out with costs to the 1st respondent.

DELIVERED, SIGNED & DATED THIS 22ND DAY OF JUNE, 2022, IN OPEN COURT AT MAKUENI.

GEORGE DULU

JUDGE

