



**Omusungu v Nyagaka (Environment and Land Appeal
E001 of 2024) [2025] KEELC 3221 (KLR) (7 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3221 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT AND LAND APPEAL E001 OF 2024**

**BN OLAO, J
APRIL 7, 2025**

BETWEEN

SYLVESTER OKUMU OMUSUNGU APPELLANT

AND

MARGARET MORA NYAGAKA RESPONDENT

RULING

1. This is in respect to the oral application by Mr Otieno counsel for the Respondent seeking the striking out of the Memorandum of Appeal dated 24th March 2025. By the aforesaid Memorandum of Appeal, Sylvester Okumu Omusugu (the Appellant herein) sought to set aside the Judgment of Hon. P. A. Olengo delivered on 22nd December 2023.
2. When the appeal came up for mention today, Mr Otieno counsel for the Respondent asked the Court to strike it out for having been filed out of time without leave.
3. Mr Andati counsel for the Appellant urged the Court to grant him time to file the relevant application.
4. Section 79G of the *Civil Procedure Act* provides that:

79G: “Every appeal from a subordinate Court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower Court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the Court that he had good and sufficient cause for not filing the appeal in time.”

The Judgment sought to be appealed was delivered on 22nd December 2023. This appeal was filed on 24th March 2025. Prior to that, two other memoranda of appeal dated 7th February 2025 and 12th January 2024 had been filed but expunged at the request of counsel for the Appellant.



The Memorandum of Appeal dated 24th March 2025 and which the Appellant now seeks to rely upon was filed on the same date. That was some 2 years and 3 months from the date when the Judgment sought to be appealed was delivered. No leave to file the appeal out of time has been granted by the Court. At least no such leave has been brought to this Court's attention.

5. In the circumstances the Memorandum of Appeal dated 24th March 2025 is hereby struck out with costs to the Respondent.

BOAZ N. OLAO

JUDGE

7TH APRIL 2025

RULING DATED, SIGNED AND DELIVERED BY WAY OF ELECTRONIC MAIL ON THIS 7TH DAY OF APRIL 2025 SOON AFTER THE ORAL APPLICATION HAD BEEN CANVASSED.

BOAZ N. OLAO

JUDGE

7TH APRIL 2025

