



**Gathumbi v Wachira (Environment and Land Appeal 25 of 2019)  
[2022] KEELC 13364 (KLR) (28 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 13364 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT AND LAND APPEAL 25 OF 2019**

**JO OLOLA, J  
SEPTEMBER 28, 2022**

**BETWEEN**

**JOHN KARIUKI GATHUMBI ..... APPELLANT**

**AND**

**STEPHEN NDEI WACHIRA ..... RESPONDENT**

**RULING**

1. By the Notice of Motion dated 8<sup>th</sup> October, 2020 John Kariuki Gathumbi (the Appellant) prays for orders:
  1. That the Appeal is in order and the same should be fixed for hearing;
  2. That the same be heard for one day; and
  3. That the Judge be pleased to give further directions as he may deem fit.
2. The application is supported by an Affidavit sworn by the Appellant is based on the grounds:
  - (i) That the Record of Appeal has been filed; and
  - (ii) That it is meet and just that directions be given.
3. Stephen Ndei Wachira (the Respondent) is opposed to the application. By his Grounds of Opposition dated and filed herein on 17<sup>th</sup> January 2022 the Respondent asserts that:
  1. The application is misconceived and incompetent;
  2. The application is bad in law, a gross abuse of the process of the Court and untenable;
  3. The application is fatally and incurably defective;
  4. The application is frivolous and vexatious; and



5. The application is otherwise without merit and should be dismissed with costs.
4. I have carefully perused and considered the application as well as the grounds filed in opposition thereto. I have similarly perused the rival submissions placed before me by the Learned Advocates acting for the parties herein.
5. The application before me is expressed to be brought pursuant to the provisions of Order 42 Rule 11 of the [Civil Procedure Rules](#). The said Rule provides that:

“Upon filing of the appeal the appellant shall within thirty days, cause the matter to be listed before a Judge for directions under Section 79B of the Act.”
6. The said Section 79B of the [Civil Procedure Act](#) on the other hand provides as follows:

79B Summary rejection of appeal

Before an appeal from a subordinate Court to the High Court is heard, a Judge of the High Court shall peruse it, and if he considers that there is no sufficient ground for interfering with the decree, part of the decree or order appealed against, he may, notwithstanding Section 79C, reject the appeal summarily.”
7. As it were a reading of the said Section 79B of the Act would appear to require that a Judge ought to peruse an appeal filed before it can be summarily rejected. It is also clear that where the Appeal is not summarily dismissed then the Registrar of this Court ought to notify the Appellant who shall then serve the Memorandum of Appeal upon all the Respondents in accordance with Order 42 Rule 12 of the [Civil procedure Rules](#).
8. After service of the Memorandum of Appeal, the Appellant is again required on notice to the other parties delivered not less than twenty one (21) days to cause the Appeal to be listed before the Judge for directions as per the provisions of Order 42 Rule 13 of the [Civil Procedure Rules](#).
9. While it was clear to me from a perusal of Order 42 of the [Civil Procedure Rules](#) that the procedure for rejection and/or admission of appeals and giving directions thereon is very well set out under the Civil Procedure Rules, it was also clear that the procedure does not seem to be strictly adhered to and that indeed it differs from one Court to another. In many Court stations, the Appellant does not seem to have any role in fixing the appeal for directions as contemplated under Order 42 Rule 11 of the [Civil Procedure Rules](#).
10. That practice appears to me to inform the position taken by the Respondent herein in his Grounds of Opposition to the application. While indeed it is the duty of the Registrar in the first instance to list the file before a Judge for directions, that cannot take away the duty of the litigant to take steps to move the Court to ensure that his Appeal is prosecuted.
11. Rule 11 of Order 42 of the [Civil Procedure Rules](#) gives the Appellant the responsibility to cause the matter to be listed before the Judge for directions. While the Rules do not expressly require the Appellant to file an application to that effect, I am unable to find any fault in the manner in which the Appellant has chosen to move the Court and give directions pertaining to the hearing of his Appeal.
12. As the Record of Appeal has now been compiled and filed herein, I am satisfied that the Appeal is indeed ready for hearing and I allow the Appellant’s Motion dated 8<sup>th</sup> October, 2020 with the directions that the Appeal be disposed off by way of written submissions.
13. The Costs of the application shall be in the Appeal.



**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT NYERI THIS 28<sup>TH</sup> DAY OF SEPTEMBER, 2022.**

**In the presence of:**

Mrs. Magua holding brief for Magua for the Appellant

Mr. Wahome Gikonyo for the Respondent

Court assistant – Kendi

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**J. O. Olola**

**JUDGE**

