



**Kiunga & another v Mutuma (Environment & Land Case E004 of 2022)
[2022] KEELC 12705 (KLR) (28 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 12705 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E004 OF 2022
CK NZILI, J
SEPTEMBER 28, 2022**

BETWEEN

JAMES MWENDA KIUNGA 1ST APPELLANT

STEPHEN MAINGI KIUNGA 2ND APPELLANT

AND

MWITI MORRIS MUTUMA RESPONDENT

RULING

1. The application dated February 7, 2022 seeks to strike out the appeal for reasons that it was filed outside the statutory 30 days period without the leave of court and therefore is an abuse of the court process. The application is supported by an affidavit sworn by Mwititi Morris Mutuma on February 7, 2022.
2. In reply to the application the 1st appellant in his affidavit sworn on March 21, 2022, stated that the judgment by the trial court was delivered on November 26, 2021 and time did not run between December 21, 2021 till January 13, 2022 in line with order 50 rule 18 of the *Civil Procedure Rules* as read together with section 59 (a) of the *Interpretation of Statutes and General Provisions Act*, he hence duly filed the appeal on the last day time was expiring.
3. There is no doubt the appeal was filed on January 19, 2022 against a judgment made on November 26, 2021.
4. The applicant takes the view the appeal was lodged outside the timelines as set under section 79 G of the *Civil Procedure Act* and the *Environment Land Court Practice Rules*, whereas the respondent states the computation of time to appeal excludes the period falling between December 21, 2021 and January 13, 2022 as provided under order 50 rule 4 *Civil Procedure Rules* both days inclusive, which is the christmas vacation.



5. The law governing appeals from subordinate courts is provided in section 79 G of the *Civil Procedure Act* and the *ELC Act* 2011 together with its practice rules.
6. The law provides an appeal has to be filed within 30 days. However, with leave, the court has discretion to admit an appeal out of time for good and sufficient cause.
7. The 30 days also excludes the time during the certification of the copy of the decree or order appealed against.
8. Order 50 rule 4 of the *Civil Procedure Rules* is in mandatory terms that time falling during the vacation shall be omitted from any computation of time for amending, delivering or filing of any pleadings or doing of any act(s) provided under the rule but shall not apply to any application in respect of a temporary injunction.
9. In *Keziab Stella Pyman & 2 others v Paul Mwololo Materu & 8 others* (2013) eKLR, the Court of Appeal held that order 50 rule 4 of *Civil Procedure Rules* was a subsidiary legislation not applicable in the computation of time limited under the *Civil Procedure Act*.
10. Applying the above reasoning and the principles, my considered view is that the appeal herein was filed within the set timelines due to the christmas vacation. The application is dismissed with no order as to costs.
11. The lower court file shall be availed to the deputy registrar so as to fast track the processing of the appeal. Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 28TH DAY OF SEPTEMBER, 2022

In presence of:

C/A: Kananu

Karanja for applicant

HON. C.K. NZILI

ELC JUDGE

