



Benson v Consolidated Bank (K) Ltd & 2 others (Environment and Land Appeal E033 of 2021) [2022] KEELC 14821 (KLR) (16 November 2022) (Ruling)

Neutral citation: [2022] KEELC 14821 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E033 OF 2021
CK NZILI, J
NOVEMBER 16, 2022**

BETWEEN

JULIA KARWIRWA BENSON APPELLANT

AND

CONSOLIDATED BANK (K) LTD 1ST RESPONDENT

SAMWEL MWENDA MBOGORI 2ND RESPONDENT

MUGA AUCTIONEERS & GENERAL MERCHANT 3RD RESPONDENT

*(Being an appeal against the ruling of Hon. S. Abuya – SPM
in Meru CM ELC No. 71 of 2018 delivered on 18.12.2019)*

RULING

1. The court is asked to strike out the memorandum of appeal with costs on both non-attendance and non-compliance with court's directives.
2. When this matter came up on July 25, 2022, counsel for the appellant told the court the appeal was related to Meru ELC Misc No 26 of 2020 where some orders were issued on April 28, 2022 which the appellant only came to learn about ten days afterwards. The court directed that the matter be mentioned on September 19, 2022 so as to give the appellant time to make the necessary applications to comply with the orders issued on April 28, 2022 said to have a bearing on the instant appeal.
3. Counsel for the appellant failed to appear in court on September 19, 2022 or serve the court with any compliance orders.
4. This appeal is yet to be admitted for hearing under section 79 of the *Civil Procedure Act* and directions issued under section 79 (b) thereof and order 42 rule 11 & 13 *Civil Procedure Rules*.



5. The appeal was filed following leave granted on February 18, 2021. The court eventually made an order for the appeal to be filed afresh.
6. Order 42 rule 35 (1) of the *Civil Procedure Rules* grants powers to the court to dismiss an appeal which has not been listed for hearing within 3 months after directions and or post admission.
7. As indicated above the appellant is yet to comply with procedures prior to admission of the appeal for hearing, for reasons known to the respondents and which were occasioned by the respondents.
8. In *Abdirahman Abdi v Safi Petroleum Products Ltd and 6 others (2011) eKLR*, a notice of appeal was served on the respondent out of time and without leave of court. The Court of Appeal upon being asked to strike it out observed that the overriding objective in civil litigation was a policy issue which the court invokes to obviate hardship, expense, delay and to focus on substantive justice and that in days long gone ,court were striking out notices of appeal or even an appeal, but with the enactment of sections 3A and 3B of the *Appellate Jurisdiction Act* and article 159 2 (2) of *the Constitution*, the position had changed.
9. In my considered view the court has to do justice between the parties without undue regard to technicalities of procedure. By weighing the prejudice that is likely to be suffered by the innocent party against the prejudice to be suffered by the offending party, I exercise my discretion and direct that the memorandum of appeal be filed within 7 days from the date hereof. I decline to strike out the appeal.

Orders accordingly

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT

THIS 16TH DAY OF NOVEMBER, 2022

In presence of:

C/A: Kananu

Miss Wanjiru for 1st & 3rd respondents

HON C K NZILI

ELC JUDGE

