



**Ngumbi v Kanini (Environment and Land Appeal E021 of 2023)
[2025] KEELC 1252 (KLR) (11 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1252 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND APPEAL E021 OF 2023**

**AY KOROSS, J
MARCH 11, 2025**

BETWEEN

JANE MWELU NGUMBI APPELLANT

AND

JOYCE KANINI RESPONDENT

RULING

1. The notice of motion (motion) dated 13/12/2023 that is the subject of this ruling is filed by the respondent, and in it, this court is moved under several provisions of law, and the respondent has sought the following reliefs: -
 - a. This appeal be struck out in its entirety for reasons that the court that granted leave to appeal out of time lacked jurisdiction to entertain matters relating to boundaries to land.
 - b. If the leave granted was proper, the appeal be struck out in its entirety as it was not filed within the stipulated time.
 - c. Costs of this appeal and application be borne by the appellant.
2. The motion is based on the grounds set out on its face and on the supporting affidavit of the respondent Joyce Kanini which is deposed on even date.
3. In summary, the respondent contends in Kangundo ELC No. 74 of 2020, the lower court entered judgment in her favour, and she commenced the execution process.
4. However, being aware the timeline to appeal had expired, the appellant moved to Machakos High Court Civil Misc. Application E131 of 2023 in which she sought leave to appeal out of time.



5. According to her, leave was granted for the appeal to be filed within 30 days; nonetheless, there was noncompliance. That sometimes on 3/10/2023, the appeal was subsequently filed before this court. She urged the court to allow the motion.
6. Despite service, the motion was not opposed, and when this matter came before this court on 27/01/2025 for a hearing, the court directed that it be canvassed by oral submissions.
7. It is noteworthy that the appellant's counsel did not attend court on this date. Nevertheless, Mr. Munguti acting for the respondent submitted the appeal was filed out of time and argued that since it was not opposed, the motion should be allowed and the entire appeal be struck out.
8. Having carefully given thought to the unopposed motion, its grounds, affidavit, annexures and submissions, the 2 issues that commend themselves for determination and which shall be addressed together are: -
 - a. Whether the appeal should be struck out.
 - b. What orders should be issued, including an order as to costs?
9. An appeal filed out of time without leave is an issue that touches on this court's jurisdiction, and in the absence of such jurisdiction, this court cannot move one step further.
10. This court adopts the position taken in the Supreme Court of Kenya decision of *Mary Wambui Munene v Peter Gichuki King'ara & 2 others* [2014] eKLR, where the court stated thus: -

“(68) The issue, whether these proceedings were a nullity ab initio is an issue that goes to the jurisdiction of this Court to entertain this matter. The question of jurisdiction is a pure question of law. This Court has on several occasions adopted the dictum of Nyarangi J.A in the *Owners of Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] KLR 1 that it has to be determined from the start, and that where the Court finds it has no jurisdiction, it should down tools.”
11. Section 16A of the Environment and Land Court Act, which mirrors Section 79G of the Civil Procedure Act, provides that appeals originating from the lower court should be filed before this court within 30 days from the date of the decree or order appealed against.
12. However, in occasions of delay, parties can by Section 95 of the Civil Procedure Act (CPA), move this court to exercise its judicious discretion based on good and sufficient grounds and the court may extend the time as it deems fit even if the time originally fixed has expired.
13. Being alive of the provisions of Section 95 of the Civil Procedure Act (CPA), the appellant sought leave to appeal out of time albeit to the High Court against the decision of the lower court which was rendered on 4/04/2023.
14. On hearing the application, the High Court on 18/07/2023 granted the appellant a conditional extension of time to appeal whereby she was to lodge her appeal within 30 days from 18/07/2023.
15. Although the respondent contends that the High Court lacked jurisdiction to entertain the appeal. It is observed that the respondent is inviting me to interrogate the propriety of the decision of the High Court.
16. For the reason that this court has concurrent jurisdiction with the High Court, I decline to entertain such a request, as I cannot sit on appeal against this decision.



17. In my humble view, it would have been appropriate if the respondent had approached the Court of Appeal to address this issue as a ground of appeal and not approached this court in the manner she has.
18. Turning to the record which I have meticulously had an opportunity to read its contents, I have established leave to appeal out of time was granted to the respondent on 18/07/2023, which was a Tuesday and the last day the appeal could be filed was 30 days thereafter which fell on 17/08/2023 - a Thursday.
19. Yet, this appeal was filed on 3/10/2023, which was close to 1 ½ months after the timelines that had been granted by the court without an extension being sought and given.
20. The issue that suffices is whether an appeal that is filed outside the stipulated timelines is competently before this court and, therefore, capable of being determined on its merits.
21. This issue is not novel and has been dealt with by our courts, and I adopt the positions they have taken. In the Supreme Court of Kenya decision of County Executive of Kisumu v County Government of Kisumu & 8 others (Civil Application 3 of 2016) [2017] KESC 16 (KLR) (Civ) (12 April 2017) (Ruling), the apex court had this to say: -

“No appeal can be filed out of time without leave of the Court. Such a filing renders the ‘document’ so filed a nullity and of no legal consequence. Consequently, this Court will not accept a document filed out of time without leave of the Court.”

22. In a decision by a court of concurrent jurisdiction with this court, Aburili J in Willis J. Ochieng & another v Samwel Abongo Asembo [2020] eKLR stated: -

“20. The right of appeal lapses the moment the statutory period for filing of such appeal lapses. Beyond that period, the law gives the court discretion to grant extension of time for filing of the appeal. However, the court has no power on its own motion to extend such time for the parties who have not sought for such leave as this is a jurisdictional issue. It is the parties to seek such extension from the court and make out their case for enlargement of time.”

23. Having filed the appeal out of time without first seeking leave to extend time or seek its admission out of time, this court is bereft of jurisdiction to entertain the appeal and finds the appeal is incompetent, a nullity, incurably defective and amenable for being struck out in limine.
24. Thus, for the reasons stated hereinabove, I find that because the appeal is a nullity, I am bereft of jurisdiction to hear the appeal on merits, and the appeal is hereby struck out. I also find the motion dated December 13, 2023 is merited.
25. It is trite law that costs follow the event, and I award the costs of the motion and the appeal to the respondent. In the end, I hereby issue the following final disposal orders: -
 - a. That the appeal is hereby struck out.
 - b. Costs of the notice of motion dated December 13, 2023 and the appeal are awarded to the respondent.

Orders accordingly.

DATED AT MACHAKOS THIS 11TH DAY OF MARCH, 2025

HON A. Y. KOROSS



JUDGE

11. 03.2025

Delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Mr. Munguti for respondent/applicant

N/A for appellant

Ms Kanja- Court Assistant

