



**Kingoro v Kithae (Environment and Land Appeal E021 of 2024)  
[2025] KEELC 3624 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3624 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA  
ENVIRONMENT AND LAND APPEAL E021 OF 2024**

**JM MUTUNGI, J**

**MAY 8, 2025**

**BETWEEN**

**SAMUEL MURIITHI KINGORO ..... APPELLANT**

**AND**

**DANIEL NJINJU KITHAE ..... RESPONDENT**

**RULING**

1. The Respondent/Applicant by a Notice of Motion dated 25<sup>th</sup> July 2024, prays for orders to strike out the Memorandum of Appeal and the entire Appeal. The application is founded on the grounds set out on the body of the application and the Affidavit sworn in support by Daniel Njinju Kithae of even date. The Applicant asserts that the Appeal was filed pursuant to orders granted on 9<sup>th</sup> April 2024, which were later set aside on 17<sup>th</sup> July 2024 for having been obtained through a fraudulent Affidavit of Service. The Applicant argues that since the Appeal was predicated on those orders, it cannot stand and should, therefore, be struck out.
2. The Appellant/Respondent opposed the application through his Replying Affidavit dated 27<sup>th</sup> September 2024. He acknowledged that he had sought leave to Appeal out of time and was granted the said orders, upon which he proceeded to file the Appeal. However, he maintained that he had engaged a Process Server whom he believed to be duly licensed and only later discovered that he had been misled. He argued that since he was also a victim of the fraudulent service, the application dated 19<sup>th</sup> December 2023, which sought leave to file the Appeal out of time, should be heard afresh rather than having the Appeal summarily struck out.

**The Applicant's Submissions**

3. The Applicant filed his written submission on 13<sup>th</sup> February 2025, where he argued that the instant Appeal having been filed pursuant to the Court order issued on 9<sup>th</sup> April 2024 which order was subsequently vacated, the Appeal was rendered incompetent and invalid as it was filed out of time.



Therefore, the Applicant contends that the Appeal is not valid and should be struck out, with costs to him. He asserts that since the orders permitting the filing of the Appeal outside the usual timeline were vacated, the current Appeal was indeed filed out of time, in contravention of Section 79G of the *Civil Procedure Act*, Cap 21 Laws of Kenya.

### **The Respondent's Submissions**

4. The Respondent filed his Written Submission dated 31<sup>st</sup> December 2024. He stated that he had hired a Process Server, but as a lay person with limited literacy skills, he was unable to determine that the individual he employed was not a licensed Process Server. Additionally, he argued that the Applicant had not shown any substantial loss that would warrant the dismissal of his appeal. He emphasized that since the matter involves land, it should be resolved based on its merits.

### **Analysis and Determination**

5. I have reviewed the Applicant's Notice of Motion, the Respondent's Replying Affidavit and the parties Written Submissions. The primary issue for determination is whether, following the setting aside of the orders issued on 9<sup>th</sup> April 2024, the Appeal should be struck out.

Section 79G of the *Civil Procedure Act* provides that:

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.

6. It is undisputed that the Appeal was filed based on leave granted through the orders of 9<sup>th</sup> April 2024. However, since those orders were set aside on the grounds of fraudulent service, it follows that the foundation upon which the Appeal was lodged has been invalidated. Consequently, the Appeal as it stands cannot be sustained.
7. Nonetheless, in setting aside the orders of 9<sup>th</sup> April 2024, the Court directed that the application seeking leave to Appeal out of time be heard afresh. The purpose of this order was to ensure that the Appellant/Respondent was not unfairly prejudiced due to a fraud that he may have been unaware of.
8. In light of the foregoing, and considering that the Appeal was filed based on orders that were set aside and vacated, the Appeal as filed is incompetent and the Memorandum of Appeal filed herein is struck out. Having regard to the circumstances, I make no order for costs and each party shall bear their own costs.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 8<sup>TH</sup> DAY OF MAY 2025.**

**J. M. MUTUNGI**

**ELC - JUDGE**

