



**Bandari v Mutuku & 12 others (Environment and Land Appeal
10 of 2023) [2024] KEELC 5256 (KLR) (10 July 2024) (Judgment)**

Neutral citation: [2024] KEELC 5256 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND APPEAL 10 OF 2023
SM KIBUNJA, J
JULY 10, 2024**

BETWEEN

PRICILLA CHARI BANDARI APPELLANT

AND

DENIS MUTUKU 1ST RESPONDENT
EDWARD KARIUKI 2ND RESPONDENT
KARISA KATANA MBOGO 3RD RESPONDENT
MOHAMED SULEIMAN CHENGO 4TH RESPONDENT
KASSIM JEFWA 5TH RESPONDENT
MUDZO MWERO 6TH RESPONDENT
LOIS KAMBENE 7TH RESPONDENT
DAZOMBO KHANGA 8TH RESPONDENT
DUME WILSON MWANYAMBA 9TH RESPONDENT
RAMA MAMBO VIBWANGA 10TH RESPONDENT
CHIBWANA HASSAN HARE 11TH RESPONDENT
ROSE CHIMEGA 12TH RESPONDENT
MWAMUYE DAKTARI & OTHERS 13TH RESPONDENT

JUDGMENT

1. The appellants commenced this appeal though the undated document headed “Memorandum of Appeal” filed on the 21st February 2023, indicating among others that the appeal was “to the Court of



Appeal against the judgement of Honourable Lady M. L. Nabibya delivered on the 12th day of January 2023....”. That is followed by what is referred to as grounds 1 to 13, in three typed papers and grounds 14 to 26 in three handwritten papers. After ground 26 are the prayers which are as follows:

- a. This appeal be allowed with costs.
 - b. Decision of 12th January 2023 in Mombasa CMC Suit no 52 of 2018, dismissing the appellant’s application dated 12th January 2023 for summary judgement be set aside.
 - c. Eviction orders against the defendants/respondents, be issued.
 - d. Mandatory injunction to issue restraining the defendants/respondents “from trespassing, building on, interfering with, or alienating or selling or continuing in occupation of the said three pieces of lands, and to demolish and remove any structures erected thereon.
 - e. Damages for the plaintiff’s burnt/demolished business and properties and or damages for trespass.
 - f. Costs of the three suits and interests thereon at court rate.
 - g. Any other and or further relief that this honourable court may deem fit and just to grant.
 - h. The appellant’s application dated 14th November 2019 be allowed with costs.”
2. On the 13th July 2023 and 9th October 2023, the court directed the appellant to file the Record of Appeal. On the subsequent mention of the 28th November 2023, the appellant informed the court that she had ensured the lower court record for Mombasa CMC ELC no 52 of 2018 had been availed to the court. The appeal was set for mention on 31st January 2024, when the appellant was given the last opportunity to file and serve the Record of Appeal.
 3. The matter was mentioned next on the 22nd April 2024, when the appellant submitted that she had provided the court with all the documents required, and that she had served all the respondents on 3rd March 2021. The court has seen a blue bound document on the record. It is not formally filed, as it lacks the left side vertical margin notes that is affixed to documents that are e-filed. It is labelled “List for Appeal Records of Documents” with 56 documents, the first document being an uncertified copy of the judgement in Mombasa CMC ELC no 52 of 2018. The appellant submitted that eviction orders should be issued to enable her remove the 1st to 10th respondents, and the structures on her plots. Finally, she confirmed that her appeal is over the Mombasa CMC ELC no 52 of 2018. The court then fixed the matter for judgement today.
 4. The court has carefully considered the documents filed by the appellant in this matter, her submissions and come to the following findings:
 - a. That though the court appreciates that the appellant is in person, it is clear that she is a person who either has difficulties carrying out court directions or has little or no understanding on her responsibilities as the appellant in this matter. As observed in the earlier ruling of 31st January 2024, she had not filed and served the Record of Appeal by then, despite being directed to do so. That notwithstanding, when she appeared for the mention on 22nd April 2024, she told the court she had served the Record of Appeal on the 3rd March 2021 upon the 1st to 10th respondents. This appeal was filed in 2023 and there is no way a no record of appeal could have been filed and served on 3rd March 2021.
 - b. The court has perused the grounds on the undated memorandum of appeal filed on the 21st February 2023, and noted it is unclear on what the appellant is aggrieved about. She has made



reference to different proceedings before the lower courts, but finally clarified that her appeal is in respect of Mombasa CMC ELC no 52 of 2018. That her failure to formally file the record of appeal, and ensure it is served upon all the respondents has made it difficult for the court to hear the appeal and decide it on merit.

- c. The uncertified copy of the judgement in the blue bound document that is not formally filed, confirms that the decision was delivered on the 12th February 2023. The 30 days within which to file the appeal on that decision ended on or about 12th February 2023. This appeal having been filed on the 21st February 2023, was therefore filed outside the statutory time given. There is no evidence that leave was sought or obtained to file the appeal outside time before or by the time this appeal was filed. The appeal should therefore be struck out.
 - d. That as under section 27 of the Civil Procedure Act chapter 21 of Laws of Kenya costs follow the events unless where for good reasons the court orders otherwise, and as the respondents have not participated in the appeal, the court finds that the appellant should meet her own costs.
5. That flowing from the above conclusions, the court finds and orders as follows:
- a. That the appeal be and is hereby struck out.
 - b. The appellant to meet her own costs.

It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 10TH DAY OF JULY 2024.

S. M. KIBUNJA, J.

ELC MOMBASA.

In The Presence Of:

Appellant: Present

Respondents : No Appearance.

Leakey – Court Assistant.

S. M. KIBUNJA, J.

ELC MOMBASA.

