



REPUBLIC OF KENYA



KENYA LAW
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**Ogola & another v Aketch (Environment and Land Appeal
E004 of 2021) [2023] KEELC 461 (KLR) (7 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 461 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT AND LAND APPEAL E004 OF 2021
GMA ONGONDO, J
FEBRUARY 7, 2023**

BETWEEN

WILKISTA AWINO OGOLA 1ST APPELLANT

EMILY ADOYO 2ND APPELLANT

AND

SEBASTIAN NENGOH AKETCH RESPONDENT

*(Being an appeal from the Judgment of the Senior Principal Magistrate's
Court at Homa-Bay, written by the Honourable Learned Trial Magistrate,
A.T. Obutu and delivered on 22nd September, 2021, by the Honourable
Learned Trial Magistrate in Environment and land Suit No. E003 OF 2020)*

RULING

1. This ruling is in regard to an application by Quinter Adoyo, learned counsel for the Respondent, Sebastian Nengoh Akech for dismissal of this appeal with costs to the respondent in the interest of justice.
2. The appeal was filed 30th September 2021 by way of a memorandum of appeal dated 24th September 2021 by the two appellants through the firm of Obach and partners Advocates anchored on eight grounds, *inter alia*;
 - a. That the leaned trial magistrate erred in Law in failing to consider that the Hon. Court had no jurisdiction to entertain the suit as it had been filed out of time and was therefore time barred.
 - b. That the learned trial magistrate erred when he failed to find that the Respondent had failed its obligations under the contract hence the termination.
3. Wherefore, the appellant prays for orders as follows.



- a. That the appeal be allowed.
 - b. That the Judgment of learned trial magistrate dated 22nd day of September, 2021 be quashed and/or set aside and the same be substituted with an order allowing the appellant's defence in lieu of the reliefs sought in Homa-Bay Chief Magistrate's Court Environment and Land Case No. E003 of 2020.
 - c. That the costs of this Appeal and in the subordinate court be awarded to the Appellants.
4. It is the assertion of the respondent's counsel that the appellant has not filed a record of appeal. That he has not complied with the orders of this honourable court.
 5. I bear in mind the proceedings of 24th October 2022 herein. Indeed, the appellant has neglected to file record of appeal as per this court's orders given on 12th February 2022 and 24th October 2022.
 6. The respondent's counsel was duly made aware of this appeal as disclosed in affidavit of service sworn on 11th November 2022 by the Respondent's counsel; see *Ogada versus Mollin* (2009) KLR 620.
 7. Article 159(2)(b) of the *Constitution* of Kenya, 2010 provides:

“Justice shall not be delayed”
 8. This court is guided by sections 3 and 19 of the *Environment and Land Court Act*, 2015 (2011) as well as sections 1A, 1B, 3 and 3A of the *Civil Procedure Act* chapter 21 Laws of Kenya.
 9. In the foregone, there is merit in the application by the respondent's counsel.
 10. Thus, this appeal, be and is hereby dismissed with costs to the respondent.

DELIVERED, DATED AND SIGNED AT HOMA-BAY THIS 7TH DAY OF FEBRUARY 2023.

G.M.A ONG'ONDO

JUDGE

Present

Quinter Adoyo, learned counsel for respondent

Okello, Court Assistant.

