



REPUBLIC OF KENYA



**Ndeda v Ali (Environment and Land Appeal E042 of 2022)  
[2023] KEELC 17150 (KLR) (4 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17150 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT AND LAND APPEAL E042 OF 2022**

**E ASATI, J**

**MAY 4, 2023**

**BETWEEN**

**ELLY NDEDA ..... APPELLANT**

**AND**

**ALI FARUK ALI ..... RESPONDENT**

*(Being an Appeal from the Judgement of the Senior Resident Magistrate (Hon. W. Onkunya) delivered on the 10th day of June, 2022 in the Chief Magistrate's Court at Kisumu in Environment & Land Court Case No.150 of 2019)*

**RULING**

1. This Ruling is in respect of the Notice of Motion application dated January 16, 2023 stated to be brought pursuant to the provisions of Section 3A of the *Civil Procedure Act* Cap 21, Order 2 Rule 15 and Order 51 Rules 1 and 3 of the *Civil Procedure Rules 2010*. It seeks for orders that the court be pleased to strike out the record of appeal for being filed out of time.
2. The grounds upon which the application is brought are that the applicant did not comply with an order in the ruling delivered on October 31, 2022 and that the applicant failed to deposit security of Kshs 2,000,000/- in an interest earning account in the names of the advocate for the parties within 30 days as ordered in the ruling. That the record of appeal was filed out of time. The application was supported by the contents of the Supporting Affidavit sworn by Derrick O. Odhiambo Advocate on January 15, 2023.
3. The application was unopposed. Affidavit of service sworn by Geoffrey O Yogo Advocate on April 11, 2023 and filed in court on the same date indicates that the Respondent was served with a hearing notice via email on April 5, 2023. A copy of the email printout and hearing notice dated March 3, 2023 were attached to the Affidavit of Service.



I have perused the Ruling dated October 31, 2022. It was a ruling in respect of an application seeking, *inter alia*, for leave to file appeal out of time. One of the orders made in the Ruling was that the time for filing the intended appeal was extended up to and including November 15, 2022. I have perused the Memorandum of Appeal filed herein and found that although dated November 15, 2022, it was filed in court on November 24, 2022.

The same applied to the Record of Appeal which though dated November 15, 2022, was received in court on November 24, 2022. This was obviously out of the time given by the court in the Ruling.

I find merit in the application and allow the same. The appeal filed herein vide the Memorandum of Appeal dated November 15, 2022 and filed in court on November 24, 2022 is hereby struck out. Costs to the applicant.

4 Orders accordingly.

**RULING DATED AND SIGNED AT KISUMU, DELIVERED VIRTUALLY THIS 4<sup>TH</sup> DAY OF MAY, 2023 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

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**E. ASATI,**

**JUDGE.**

**In the presence of:**

**Maureen- Court Assistant.**

Odhiambo for the applicant

No appearance for the Respondent

