



**Mwangi v Mensire (Environment and Land Appeal E001 of 2023)
[2023] KEELC 21306 (KLR) (3 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21306 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND APPEAL E001 OF 2023**

**A OMBWAYO, J
NOVEMBER 3, 2023**

BETWEEN

DAVID MWAURA MWANGI APPLICANT

AND

JOB OBIERO MENSIRE RESPONDENT

RULING

1. The respondent herein has filed an application dated 11th September 2023 praying for orders that the honorable court be pleased to issue an order dismissing the suit herein above for it was not served. That the Honorable Court be pleased to issue an order distancing him from ELCA No. E001 of 2023 which he was served on the 10th day of July 2023 and the same was on the 17th day of January 2023 registered for Clement v. Gachuhi Kabaya vs Benson Kibochi Nganga. The application is based on grounds that the memorandum of Appeal served to him has lasted for more than sixty (60) days without any action being taken and therefore have it legally quashed.
2. The applicant laments that ELCA No. E001 of 2023 which he was served with was not registered in his name but in the name of Clement v. Gachuhi Kabaya vs Benson Kibochi Nganga. That when he intended to file his replying affidavit the same was rejected on ground that it was registered in the name Clement v. Gachuhi Kabaya vs. Benson Kibochi Nganga.
3. In the replying affidavit sworn by Waiganjo Mwangi, an advocate of the High Court of Kenya it is stated that the application is misconceived, incompetent and an abuse of court process.
4. According to the respondent, judgment was delivered on 9th June 2023. The appeal was lodged on 7th June 2023. The case numbers for cases are automatically generated by the system after payment of fees. The respondent was served with the memorandum of appeal which he received. The deponent states that the mistake in reference of the case as ELCA E001 of 2023 was due to the automation process. The applicant is aware that the case number is ELC LA No.E001 of 2023.



5. I have considered the application, response and rival submissions and do find that the error in registration of the appeal as ELCA EOO1 of 2023 cannot be visited on the appellant. Moreover, the appeal is not ripe for striking out as the lower court file has not been availed for the appeal to be admitted. The application by the respondent fly's in the face of Article 159 (2) (d) of *the Constitution* of Kenya 2010 that provides:

- 1) Judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under this Constitution.
- (2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles—
 - (a) justice shall be done to all, irrespective of status;
 - (b) justice shall not be delayedthe purpose and principles of this Constitution shall be protected and promoted.
 - (c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3);
 - (d) justice shall be administered without undue regard to procedural technicalities; and
 - (e) the purpose and principles of this Constitution shall be protected and promoted.

6. The respondent seeks to terminate the appeal through technicalities that do not go on merit of the case.

7. Order 42 rule 2 of the *Civil Procedure Rules* provides that:

Filing of decree or order [Order 42, rule 2.]

Where no certified copy of the decree or order appealed against is filed with the memorandum of appeal, the appellant shall file such certified copy as soon as possible and in any event within such time as the court may order, and the court need not consider whether to reject the appeal summarily under section 79B of the *Act* until such certified copy is filed.

8. Order 42 rule 11 of the *Civil Procedure Rules 2010* provides:

Directions under section 79B [Order 42, rule 11.]

A judge of the High Court shall, within thirty days of the filing of an appeal under section 79B of the *Act*, peruse the appeal and give directions in accordance with the provisions of section 79B of the *Act*

9. Order 42 Rule 13 (40 of the *Civil procedure Rules 2010* provides :-

13. Directions before hearing [Order 42, rule 13.]

- (4) Before allowing the appeal to go for hearing the judge shall be satisfied that the following documents are on the court record, and that such of them as are not in the possession of either party have been served on that party, that is to say—
 - (a) the memorandum of appeal;
 - (b) the pleadings;
 - (c) the notes of the trial magistrate made at the hearing;



- (d) the transcript of any official shorthand, typist notes electronic recording or palantypist notes made at the hearing;
- (e) all affidavits, maps and other documents whatsoever put in evidence before the magistrate;
- (f) the judgment, order or decree appealed from, and, where appropriate, the order (if any) giving leave to appeal:

Provided that—

- (i) a translation into English shall be provided of any document not in that language;
- (ii) the judge may dispense with the production of any document or part of a document which is not relevant, other than those specified in paragraphs (a), (b) and (f).

10. These documents are not on record yet to enable the court to consider admission of the appeal. I do find the application misconceived and is dismissed with costs.

RULING DATED SIGNED AND DELIVERED VIA EMAIL AT NAKURU THIS 3RD DAY OF NOVEMBER, 2023.

A. O. OMBWAYO

JUDGE

