



**Lemaletian v Thurania t/a Simut Logistics (Commercial Appeal E104 of 2024)
[2025] KEHC 2303 (KLR) (Commercial and Tax) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2303 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL APPEAL E104 OF 2024
JWW MONG'ARE, J
FEBRUARY 20, 2025**

BETWEEN

HON SENATOR HEZENA M LEMALETIAN APPELLANT

AND

SILAS THURANIRA T/A SIMUT LOGISTICS RESPONDENT

RULING

Introduction and Background:

1. On 22nd March 2024, the subordinate court entered judgment for the Respondent against the Appellant for the sum of Kshs.291,165.00/= plus costs of the suit. The Appellant being dissatisfied with this decision has evinced her intention to appeal against the same through her Memorandum of Appeal dated 22nd April 2024. This prompted the Respondent to file the Notice of Motion dated 30th April 2024 where he seeks to strike out the appeal for the reason that it has been filed out of time.
2. The application is supported by the grounds on its face and the supporting affidavit of the Respondent's counsel, HENRY KURAUKA, sworn on 30th April 2024. It is opposed by the Appellant through her replying affidavit sworn on 22nd May 2024. Upon directions by the court, both parties filed their written submissions. The application was canvassed by way of written submission which together with the pleadings which I have considered carefully and I will therefore make relevant references to in my analysis and determination below.

Analysis and Determination:-

3. Upon considered analysis of the pleadings filed before this court and the parties rival submissions, I note that the court is being called upon to determine whether the Appellant's appeal should be struck out for being filed out of time. The parties agree that as per section 79G of the [Civil Procedure Act](#)



(Chapter 21 of the Laws of Kenya), an appeal from the subordinate court to this court must be lodged within 30 days of the date from when the impugned decision is delivered. The Respondent states that the Appellant's appeal has been filed after 30 days and without the leave of court and thus the same is amenable to be struck out. He depones that the appeal was lodged on 24th April 2024 and yet the last day of filing was 21st March 2024.

4. On her part, the Appellant states that the appeal was filed within the prescribed period as the impugned judgment was delivered on 22nd March 2024 and the appeal filed on 22nd April 2024 and not 24th April 2024. That the 24th April 2024 reflects an error in the e-filing portal, an error which must not be used to lock her out of the sacred seat of justice. She avers that the 30 days for filing the appeal expired on Sunday, that is 21st April 2024 and that as per Order 50 Rule 3 of the *Civil Procedure Rules*, the filing is deemed to have been filed on the next day when offices are open. The Appellant thus urges the court to dismiss the appeal.
5. Resolution of this application is straightforward as it is a matter of simple fact and evidence. The judgment of the subordinate court is dated 22nd March 2024 meaning that the Appellant had to file her appeal by 22nd April 2024 latest. The Appellant has annexed the court's receipt indicating that she paid for the appeal on 22nd April 2024. My perusal of the Court Tracking System(CTS) also indicates that the Memorandum of Appeal was filed on 22nd April 2024. I am in agreement with the Appellant that both as a matter of practice and also as a matter of law, pleadings cannot validly be filed in the registry until fees have been paid or rather, pleadings are only deemed to be filed in court upon payment of court fees for the filing thereof (see *South Nyanza Sugar Company Limited v Samwel Osewe Ocbillo P/ A Ocbillo & Company Advocates* [2007] KECA 175 (KLR))
6. I am inclined to accept the Appellant's averment that even though the Respondent, has annexed the Memorandum of Appeal which indicates the "filing date" as 24th April 2024, the same must have been an error on the e-filing portal and does not dislodge the clear proof of the court filing receipt and the CTS which indicate that the appeal was actually filed on 22nd April 2024. Therefore, it is my finding that the appeal was filed within time

Conclusion and Disposition:-

7. In conclusion, I find no merit in the Respondent's application dated April 30, 2024 and the same is dismissed. Costs of this application shall abide the outcome of the appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 20TH DAY OF FEBRUARY 2025

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J.W.W. MONGARE

JUDGE

In the Presence of:-

1. No Appearance for the Appellant.
2. Mr. Kurauka for the Respondent/Applicant.
3. Amos - Court Assistant

