



REPUBLIC OF KENYA



**Wamiori v Mumbo (Civil Appeal E003 of 2024)
[2025] KEHC 4406 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4406 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL APPEAL E003 OF 2024**

**M THANDE, J
APRIL 4, 2025**

BETWEEN

GLADYS MICERE WAMIORI APPELLANT

AND

JAMES KALUNGU MUMBO RESPONDENT

RULING

1. By an Application dated 15.11.24, the Appellant/Applicant seeks the following orders:
 - a. That this Application be certified urgent and be dispensed with in the first instance.
 - b. That in the interim, this Honourable Court be pleased to stay the Ruling and Order it issued on 15th November, 2024 pending inter parties hearing of this Application.
 - c. That this Honourable Court be pleased to set aside and/or vary the Orders it issued on the 15th November, 2024 dismissing the Appellant's/Applicant's Notice of Motion Application for stay of execution of the Ruling and Order of Hon J.M. Kituku (S.P.M) Kilifi dismissing the Applicant's Limited Objection to the confirmation of Grant in Kilifi *Kilifi Senior Principal Magistrate's Court Succession Cause No. E136 of 2021*: In the Mater of the Estate of Brayson Ngala Mumbo Deceased as consolidated with *Succession Cause No: E160 of 2021*: In the Mater of the Estate of Chigongo Mbimbo Ngala (deceased) dated 3 1st January, 2024 and striking out the Memorandum of Appeal dated 17th January, 2024 and not only allow the Application to preserve the substratum of the Appeal but also reinstate the Appeal which is arguable so that it can be heard and determined on merit.
 - d. That costs of this application be in the cause.
2. The Application is supported by the grounds on its face and in the supporting affidavit sworn on even date by Mwawasi Martin Mjomba, the Appellant/Applicant's counsel.



3. In its ruling of 15.11.24, the Court dismissed the Application and struck out the Appeal on the grounds that it was filed 2 days late without leave. The Applicant's case is that on 19.1.24, when the application and memorandum of appeal were assessed, the registry mistakenly registered the appeal under incorrect names. Upon bringing this to their attention, the registry assured that matter would be corrected, which was subsequently done.
4. After receiving the assessed payment receipt from the registry, counsel made payment and filed documents on the 20.1.24. However, the documents were stamped with a date of 22.1.24. The Appellant/Applicant is thus of the view that this is what led the Court to mistakenly conclude that the appeal was filed 2 days late. The Appellant/Applicant maintains that the appeal was filed within the statutory timelines and had no role in creating this misunderstanding.
5. The Appellant asserted that she is keen on prosecuting the appeal and urged that it is in the interest of justice that the Court permits the Application to preserve the substance of the appeal and reinstate it so that it can be evaluated on its merits. Further that she risks significant prejudice if the orders sought are not granted while there will be no prejudice to the Respondent.
6. The Respondent opposed the Application *vide* a replying affidavit sworn on 9.12.24. The Respondent averred that from the documents exhibited by the Appellant/Applicant, the invoice was generated on Friday 19.1.23 and payment done on Saturday 20.1.24 and the receipt was generated on 22.1.24. As such, the memorandum of appeal and application were filed on 22.1.24 and not 19.1.24 as claimed. The Respondent urged the Court to scrutinize the stamps and receipts of the filed documents. The Respondent further contends that it was the Appellant/Applicant that caused the confusion by backdating documents and making payments on a Saturday and serving the same on 5.2.24 outside the prescribed time. Further that the conditions for review a stipulated in Order 45 Rule 1 of the [Civil Procedure Rules](#) have not been met.
7. The statutory period for filing an appeal in this Court from a subordinate Court is 30 days. This is stipulated in Section 79G of the [Civil Procedure Act](#) which provides:

Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.
8. The decision of the lower court was made on 20.12.23. By dint of Section 79G of the [Civil Procedure Act](#), the appeal ought to have been filed by 20.1.24. The exhibited invoice is dated 19.1.24, a Friday, while the receipt shows payment was made on Saturday 20.1.24. The documents were date stamped 22.1.24, which is when they were presented for filing. There is thus no error on the part of the registry in stamping the memorandum of appeal with 22.1.24 as the date of filing.
9. The foregoing notwithstanding, the Court has considered the provisions of Order 50 Rule 4 of the [Civil Procedure Rules](#) which provides for when time does not run as follows:

Except where otherwise directed by a judge for reasons to be recorded in writing, the period between the twenty-first day of December in any year and the thirteenth day of January in the year next following, both days included, shall be omitted from any computation of time (whether under these Rules or any order of the court) for the amending, delivering or filing of any pleading or the doing of any other act:



Provided that this rule shall not apply to any application in respect of a temporary injunction.

10. As indicated, the decision in question was made on 20.12.23. Pursuant to the above provisions, the period of 24 days from 21.12.23 to 13.1.24 ought to have been omitted in computation of the 30 days within which the appeal ought to have been filed. The period ought to have begun to run on 14.1.24. Accordingly, the appeal was filed within the stipulated period.
11. The upshot is that for the reason stated, the Application dated 15.11.24 is allowed on the following terms:
 1. The appeal is hereby reinstated for hearing on merit.
 2. The stay of execution granted shall remain in place pending the hearing and determination of the appeal.
 3. The Appellant shall file and serve record of appeal by 18.4.25. In default, the appeal shall stand dismissed.
 4. Mention for compliance on 13.5.25.
 5. The costs of this Application shall abide the outcome of the appeal.

DATED, SIGNED AND DELIVERED IN MALINDI THIS 4TH DAY OF APRIL 2025

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M. THANDE

JUDGE

