



**Galgalo v Board of Management Nairobi Primary School; Nairobi
City County (Interested Party) (Civil Appeal E043 of 2021)
[2025] KEHC 5931 (KLR) (Commercial and Tax) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5931 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL APPEAL E043 OF 2021**

BM MUSYOKI, J

MAY 9, 2025

BETWEEN

EVE GUYATU GALGALO APPELLANT

AND

BOARD OF MANAGEMENT NAIROBI PRIMARY SCHOOL RESPONDENT

AND

NAIROBI CITY COUNTY INTERESTED PARTY

(Being appeal from ruling and orders of Hon. E. Wanjala (PM) delivered on 28th May 2021.)

RULING

1. This appeal emanates from ruling of the trial court dated 28th May 2021. It was slated for judgement today but this court will instead deliver a ruling for reason stated hereinbelow.
2. Appeals to this court from the subordinate court are governed by Section 79G of the *Civil Procedure Act* and Order 42 of the *Civil Procedure Rules*. Section 79G of the *Act* provides as follows.;

‘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.’



3. It is not disputable that for an appeal from the subordinate court to this court can only be competent if it is filed within thirty days from the date of the decision being appealed. This is a statutory provision which must be adhered to. Where an appeal is filed out of time without the leave of the court, the court has no jurisdiction to entertain the same. In *Patrick Kiruja Kitbinji v Victor Mugira Marete* (2015) KECA 872 (KLR) the Court of Appeal held as follows;

‘In our view whether or not an appeal is filed on time goes to the jurisdiction of this Court. It is trite that this Court has jurisdiction to entertain appeals filed within the requisite time and/or appeals filed out of time with leave of the Court. To hold otherwise would upset the established clear principles of institution of an appeal in this Court.’

4. According to the record, this matter was commenced by way of filing of a notice of appeal dated 28th May 2021 which was filed on 3-06-2021. Nothing else was filed until 11-08-2023 when the applicant filed a memorandum of appeal dated 9-08-2023. Order 42 Rule 1 of the *Civil Procedure Rules* provides that;

‘Every appeal to the High Court shall be in the form of a memorandum of appeal signed in the same manner as a pleading.’

5. In view of the above provisions, this appeal can only be said to have been filed on 11-08-2023 when the memorandum of appeal was filed and not on 3-06-2021. As indicated above, an appeal must be filed by way of a memorandum of appeal and not a notice of appeal. Actually, the Rules do not recognise or provide for a notice of appeal in the process of filing appeals from the subordinate courts to the high court. In *JWB v RNK* (2015) KEHC 7058 (KLR) Honourable Justice William Musyoka held that;

‘By dint Order 42 rule 1(1) of the *Civil Procedure Rules* there cannot be a valid appeal unless there is on record a memorandum of appeal originating the appeal process.’

6. Honourable Justice J.R. Karanja also held in *SKL v WKL* (2025) KEHC 4546 (KLR) that;

‘A notice of appeal does not constitute the filing or institution of an appeal which ordinarily has to be within a period of thirty [30] days after delivery of a judgment and/or ruling.

An appeal is therefore said to be filed and/or instituted upon the filing of a memorandum of appeal setting out the grounds of appeal and the Appellant’s prayers.’

7. This matter appeared several times before Judges and the Deputy Registrars for pre-trials and the issue of the memorandum of appeal having been filed out of time was never raised but this does not mean that this court should ignore it once it comes to its attention.

8. Proviso to Section 79G of the *Civil Procedure Act* provides that the period required for obtaining typed proceedings from the subordinated court should not be reckoned when computing time for filing an appeal. For the court to determine the time to be excluded in computing time, it should be supplied with a certificate of delay to that effect from the trial court. No such certificate has been filed or provided to this court. A look at the proceedings appearing on pages 110 to 120 of the record of appeal shows that the same were certified on 27-06-2023. Assuming that this was the date the proceedings were ready for collection, the period of thirty days from the date of certification lapsed on 26-07-2023 while the memorandum was filed on 11-08-2023.

9. In view of the above discussion, this court finds that the appeal herein is incompetent for two reasons. The first one is that the appeal was apparently commenced by way of a notice of appeal instead of a



memorandum of appeal and the second one is that the memorandum of appeal was filed out of time without the leave of the court.

10. Consequently, the appeal is hereby struck out in its entirety. Since the respondent and the interested party did not appear in the appeal, no costs are due to them. I therefore make no orders as to costs.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF MAY 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Ruling delivered in presence of Mr. Muimi for the appellant and in absence of the respondent and the interested party.

