



REPUBLIC OF KENYA



**Kinyua & another v Odenyo & another (Civil Appeal E446 of 2025)  
[2025] KEHC 12846 (KLR) (Civ) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12846 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E446 OF 2025**

**AC MRIMA, J**

**SEPTEMBER 18, 2025**

**BETWEEN**

**CHRISTOPHER MUREITHI KINYUA ..... 1<sup>ST</sup> APPELLANT**

**DATA RUSH SERVICES LIMITED ..... 2<sup>ND</sup> APPELLANT**

**AND**

**LUCY NAROTHO ODENYO ..... 1<sup>ST</sup> RESPONDENT**

**SAMUEL ODUOR ODENYO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This ruling is in respect of the application by way of a Notice of Motion dated 15<sup>th</sup> April 2025 which was filed by the Appellants. The application sought leave to file an appeal out of time and a stay of execution of the judgment and decree in Nairobi [Milimani] CMCC No. 6931 of 2019 between the parties herein [hereinafter referred to as 'the suit']. The application was, however, instead filed in Civil Appeal No. E446 of 2025.
2. The application was supported by an Affidavit sworn by one Mathew Okiring, a Legal officer at the Occidental Insurance Company Limited and written submissions dated 30<sup>th</sup> May 2025. The application was also opposed by the Respondents through Grounds of Opposition/Points of Law dated 23<sup>rd</sup> April 2025 and written submissions dated 6<sup>th</sup> May 2025. Several decisions were referred to by the parties both in support and opposition to the application. This Court will ingrain the submissions and decisions in the latter part of this decision.
3. Having considered the application, the Grounds of opposition and the submissions, the main issue for determination is whether the application ought to be allowed.
4. This Court finds and hold that the application is unmerited for the following two reasons: -



5. One, while the application seeks to eventually challenge the judgment in the suit, it was, however, filed by a different firm of Advocates without obtaining leave to do so pursuant to Order 9, rule 5 of the Civil Procedure Rules. The said provision states as follows: -

A party suing or defending by an advocate shall be at liberty to change his advocate in any cause or matter, without an order for that purpose, but unless and until notice of any change of advocate is filed in the court in which such cause or matter is proceeding and served in accordance with rule 6, the former advocate shall, subject to rules 12 and 13 be considered the advocate of the party until the final conclusion of the cause or matter, including any review or appeal.

6. Therefore, the application and appeal were filed by a party without any locus standi. It, hence, suffers a false start.

7. Two, whereas the application seeks leave to file an appeal out of time, it was instead filed as a substantive appeal and not as a Miscellaneous application. When the Respondents raised an objection to the issue in the grounds of opposition, the Applicants did not take any step, but stated in their written submissions that the application was wrongly filed as an appeal in error. However, this Court is not convinced by that reason since the heading of the application indicated clearly that the matter was a Civil Appeal and not in a Miscellaneous Application. Therefore, the Appellants intended to, and subsequently so, filed a substantive appeal.

8. In driving the above irregularity home, the Respondents relied on the Supreme Court decision in Salat v Independent Electoral and Boundaries Commission & 7 others (Application 16 of 2014) [2014] KESC 12 (KLR) (Civ) (4 July 2014) (Ruling) where the Apex Court discussed the sequence of events in seeking to lodge an appeal out of time. The Court frowned against the filing of an appeal out of time and then seeking for leave to deem it properly on record. The Court stated as follows: -

53. By filing an appeal out of time before seeking extension of time, and subsequently seeking the Court to extend time and recognize such 'an appeal', is tantamount to moving the Court to remedy an illegality. This, the Court cannot do.

54. To file an appeal out of time and seek the Court to extend time is presumptive and inappropriate. No appeal can be filed out of time without leave of the Court. Such a filing renders the 'document' so filed a nullity and of no legal consequence. Consequently, this Court will not accept a document filed out of time without leave of the Court. It is unfortunate that Petition No. 10 of 2014 has been accorded a reference number in this Court's Registry. This is irregular as that document is unknown in law and the same should be struck out. Where one intends to file an appeal out of time and seeks extension of time, the much he can do is to annex the draft intended petition of appeal for the Court's perusal when making his application for extension of time; and not to file an appeal and seek to legalize it. Petition No. 10 of 2014 having been filed out of time and without leave (an order of this Court extending time), is expunged from the Court's Record.

9. On the basis of the foregoing, this Court hereby makes the following final orders: -

- (a) Civil Appeal No. E446 of 2025 and the Notice of Motion dated 15<sup>th</sup> April 2025 are hereby struck out.
- (b) The Appellants shall bear the costs of the application.



- (c) Any order staying the execution of the judgment and decree in Nairobi [Milimani] CMCC No. 6931 of 2019 is hereby discharged and set-aside forthwith.
- (d) This matter is hereby marked as closed.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 18<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**A. C. MRIMA**

**JUDGE**

Ruling virtually delivered in the presence of:

Mr. Kibet, Learned Counsel for the Appellants.

Mr. Kaburu, Learned Counsel for the Respondent.

Michael/Amina – Court Assistants.

