



**Saggia v Mwangi (Civil Appeal E1317 of 2023)
[2025] KEHC 12850 (KLR) (Civ) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12850 (KLR)

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

CIVIL

CIVIL APPEAL E1317 OF 2023

AC MRIMA, J

SEPTEMBER 18, 2025

BETWEEN

GILBERT NYAONDO SAGGIA APPELLANT

AND

TITUS MURIUKI MWANGI RESPONDENT

*(Being an appeal from the Judgment of Hon. C. A. Okumu (Adjudicator)
dated 28th July 2023 and reviewed on 30th October 2023 in Nairobi
[Milimani] Small Claims Court Civil Case No. E696 of 2023)*

JUDGMENT

Background:

1. This is a consolidated judgment relating to two issues. The first issue is an appeal lodged against the judgment in Nairobi [Milimani] Small Claims Court Civil Case No. E696 of 2023 [hereinafter referred to as ‘the suit’] delivered on 28th July 2023 and reviewed on 30th October 2023. The second issue relates to the Notice of Preliminary Objection dated 13th September 2024 which challenged the appeal on grounds that it was filed out of time without leave of the Court.
2. On this Court’s directions, parties filed their respective submissions on both the appeal and the objection, hence, this judgment. Since the objection is on the jurisdiction of this Court, it will have precedence over the main appeal. As such, the objection will be considered in the first instance.

The Objection:

3. The objection was straight-forward. It contended that the appeal offended Section 79G of the *Civil Procedure Act*, Cap. 21 of the Laws of Kenya [hereinafter referred to as ‘the *Act*’] for having been filed



96 days after the delivery of the judgment and 2 days out of time in respect to the review order rendered on 30th October 2023.

4. The Appellant did not dispute the above facts. He, however, contended that the appeal against the review order was filed in time on the basis of Order 50 Rules 1 and 2 of the *Civil Procedure Rules* [hereinafter referred to as ‘the Rules’]. Several decisions were referred to by the parties in urging this Court to uphold their respective positions.

5. Section 79G of the *Act* provides for the timelines on filing appeals as to the High Court as follows: -

79G. Time for filing appeals from subordinate courts

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.

6. There is no doubt that since the judgment which was delivered on 28th July 2023 was reviewed by an order of 30th October 2023 then the focus should only be on whether the appeal against the review order was filed timeously since if it was, then that takes care of the judgment. As the ruling on the review was delivered on 30th October 2023, then pursuant to Section 79G of the *Act*, the Appellant had 30 days within which to lodge an appeal. The period of 30 days from the 30th October 2023 inclusive ended on 29th November 2023.

7. The Appellant admitted filing the appeal on 1st December 2023. He argued that since Sundays and public holidays were excluded from computing time, then the appeal window lapsed on 4th December 2023 way before the filing of the instant appeal.

8. In resolving this issue, reference will be made to Order 50 Rules 2, 3 and 4. The said rules are hereunder reproduced for ease of reference: -

2. Exclusion of Sundays and public holidays [Order 50, rule 2]

Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceedings, Sunday, Christmas Day and Good Friday, and any other day appointed as a public holiday shall not be reckoned in the computation of such limited time.

3. Time expiring on Sunday or day offices closed [Order 50, rule 3]

Where the time for doing any act or taking any proceeding expires on a Sunday or other day on which the offices are closed, and by reason thereof, such act or proceeding cannot be done, or taken on that day, such act or proceeding shall so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.

4. When time does not run [Order 50, rule 4]

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.

9. Although Rule 2 excludes Sunday, Christmas Day, Good Friday, or any other day appointed as a public holiday in the computation of time, the rule is only limited to instances where the time in issue is less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceedings. Therefore, this rule does not apply in this matter since the period for lodging an appeal is 30 days.
10. Rule 3 applies in instances where the time for doing any act or taking any proceeding expires on a Sunday or other day on which the offices are closed. In that case, such act may be done or taken on the day on which the offices shall next be open. In this case, the 29th November 2023 was a Wednesday. The rule, therefore, does not apply as well.
11. Lastly is Rule 4. The rule specifically prohibits time from running between the twenty-first day of December in any year and the thirteenth day of January in the year next following, both days included except when the subject relates to a temporary injunction. Again, this rule is not applicable in this matter since the events in issue did not fall within the contemplated period and the subject was not an injunction application. Therefore, the Appellant's contention that the 30-days' appeal window was to lapse on 4th December 2023 on account of time not running on Sundays and public holidays was misplaced. The Appellant had up to the 29th November 2023 to lodge the appeal. As such, the appeal was rightly so lodged out of time.
12. What was then the available recourse to the Appellant? Rule 6 foresaw instances where parties may not lodge appeals within the prescribed timelines and gave a way out. The rule provides for the Court's power to enlarge time. It states as follows: -

Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed:

Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise.

13. As the Appellant did not utilize the above avenue, then the appeal was filed without leave of the Court and that renders it a non-starter. The appeal suffers a false start and thereby incompetent.
14. Having found that there is no competent appeal for consideration, then the discussion ought to end here since any further attempt to look into the incompetent appeal will be solely academic.

Disposition:

15. In the end, the following final orders hereby issue: -
 - (a) The appeal is hereby struck out with costs.
 - (b) The Notice of Preliminary Objection dated 13th September 2024 is allowed with costs.
 - (c) This matter is hereby marked as closed.

It is so ordered.



DELIVERED, DATED AND SIGNED AT NAIROBI THIS 18TH DAY OF SEPTEMBER, 2025.

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

Ms Awinja, Learned Counsel for the Appellant.

Mr. Omondi, Learned Counsel for the Respondent.

Michael/Amina – Court Assistants.

