



REPUBLIC OF KENYA



**Wamukoya v Mayabi (Civil Appeal E040 of 2022)
[2024] KEHC 3830 (KLR) (19 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3830 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CIVIL APPEAL E040 OF 2022
WM MUSYOKA, J
APRIL 19, 2024**

BETWEEN

ROSELYNE SHIBUKO WAMUKOYA APPELLANT

AND

LYNETT OLOO MAYABI RESPONDENT

*(An appeal arising from ruling and order by Hon. L. Ambasi, Chief Magistrate,
CM, in Busia CMC Misc. Application No. E021 of 2021, of 28th September 2021)*

RULING

1. The memorandum of appeal herein, dated 10th November 2022, was lodged herein on 11th November 2022, to challenge an order of the trial court made on 28th September 2021.
2. Under section 79G of the *Civil Procedure Act*, Cap 21, Laws of Kenya, an appeal to the High Court, from a decree or order of a subordinate court, should be filed within 30 days of the decree or order. 30 days from 28th September 2021 expired on or about 28th October 2021. That would be the date by which any challenge, by way of appeal, against that order, should have been lodged at the High Court. The same provision though allows the court to extend time for filing an appeal out of time, for good cause.
3. The appeal herein was lodged at the registry herein some 8 months and 13 days thereafter. It was filed at least some 7 months outside time. No material has been placed before me as evidence that leave was sought and obtained to bring the appeal out of time. No attempt has been made to demonstrate good cause for filing the appeal late.
4. As the appeal before me is stale, it should suffer only one fate, of being struck out, and I hereby strike it out. I note that the Advocate for the respondent has attended court several times, and so I shall award costs to the respondent..



**DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 19TH DAY OF
APRIL 2024.**

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Egesa, instructed by Bogonko Otanga & Company, Advocates for the appellant.

Mr. Ashioya, instructed by Ashioya & Company, Advocates for the respondent.

