



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT THIKA

CIVIL APPEAL NO. 4 OF 2020

JOSEPHINE WAMBUI MWANGI.....APPELLANT

VERSUS

MICHAEL MUKUNDI NGUGI.....RESPONDENT

RULING

1. The memorandum of appeal in this appeal was lodged on **16/1/2020**. The judgment appealed against was rendered in **Thika CMCC No. 1027 of 2013** on **10/12/2018**. On 19/2/2020, the respondent brought a notice of preliminary objection dated 19/2/2020, urging the court to strike out the appeal on the following grounds.

- a) The appeal is incompetent, bad in law and fatally defective for it has been filed out of time and without leave of the honourable court.*
- b) The appeal was filed on 16/1/2020 which is over a year and one month after the judgment was delivered on 10.12.2018.*
- c) The record of appeal is defective as it has no proceedings of the lower court.*
- d) It is an abuse of the court process and the same ought to be struck out with costs to the respondent.*

2. The preliminary objection was canvassed through written submissions dated 6/7/2021. The appellant filed written submissions dated 29/6/2021. I have considered the rival submissions. One of the substantive and specific grounds upon which the respondent seeks an order striking out the appeal is that it was filed out of time and without leave of the court. The response which counsel for the appellant gave in the appellant's written submissions is that the appellant acted in person and that the point raised in the preliminary objection by the respondent did not challenge the merits of the appeal. I do not think this is a serious response to a defect that flies in the face of a mandatory requirement of the law. **Section 79G** of the **Civil Procedure Act** provides as follows:-

“79G. 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 [Rev. 2012] CAP. 21 Civil Procedure 35 [Issue 1] 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. No attempt was made to have the appeal admitted out of time. In the circumstances, the court cannot condemn the respondent to respond to an appeal that has been filed in blatant disregard of the law and no attempt has been made to regularize the defect. The net result is that the court agrees with the respondent that this appeal stands to be struck out on the ground that it was filed more than one year outside the stipulated time and without an order enlarging time for bringing the appeal.

4. The second ground of objection relates to the appellant's failure to include proceedings of the trial court in the record of appeal. If this were the only defect, the court would have directed the appellant to file a supplementary record of appeal. However, because the appeal is fatally defective on the ground that it was filed more than one year out of time, calling for a supplementary record of appeal will not breath life into the appeal.

5. The net result is that the appeal herein is struck out for having been filed more than one year out of time and without an order enlarging the time for filing the appeal. The appellant shall bear costs of the appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 18TH DAY OF NOVEMBER 2021

B M EBOSO

JUDGE

In the presence of: -

Ms Macharia for the Respondent

Court Assistant: Lucy Muthoni