



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Mackallah v Morintat & another (Land Case Appeal E004 of 2025)  
[2025] KEELC 4589 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4589 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
LAND CASE APPEAL E004 OF 2025  
MN MWANYALE, J  
JUNE 19, 2025**

**BETWEEN**

**DAVID NJOMO MACKALLAH ..... APPELLANT**

**AND**

**SAMUEL LEURU MORINTAT ..... 1<sup>ST</sup> RESPONDENT**

**COMMITTEE OLOMISMIS GROUP RANCH ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Notice of motion dated 28/02/2025 subject of this Ruling seeks to strike out the Appeal filed on 31<sup>st</sup> January 2025 the same having been filed out of time and without leave of the Honourable court. Contrary to section 79(G) of the *Civil Procedure Act* 2010.
2. In support of the application are 5 grounds to wit,
  - i. That the judgement at the trial court in Kilgoris MCELC No. 38/2019 was delivered on 22/10/2024.
  - ii. The Appellant filed the present appeal on 31/01/2025, well outside the 30 days statutory period provided by section 79(G).
  - iii. That no leave was sought or obtained to filing the Memorandum of Appeal dated 31/10/2025.
  - iv. In view of the foregoing, this Honourable court is devoid of jurisdiction to entertain the Appeal.
  - v. In the premises, the Appeal filed herein, is misconceived and bad in law.
3. The Application is supported by the affidavit of the 1<sup>st</sup> Respondent/Applicant Mr. Samuel Leuru Morintat who reiterates the grounds in support of the application and has annexed a hand written copy of the judgement delivered on 22/10/2024.



4. The Appellant/Respondent Mr. David Njomo Makallah acting in person, filed a Response to the application vide the Replying affidavit deponed on 14<sup>th</sup> March 2025 with a whopping 40 paragraphs raising interalia the reasons for the delay, but still conceded at paragraph 7 thereof that the judgement was delivered on 22/10/2024, and that his appeal was lodged on 31/01/2025 as deposed at paragraph 13 thereof.
5. The Replying affidavit alluded to issue of substantive justice under Article 159(2)(d) of the constitution and that procedural rules are hand maids of justice, hence the application lacks merit and ought to be dismissed.
6. The application was canvassed by written submissions which the court has taken into account.
7. The only issue for determination is whether the application is merited.
8. Having conceded that the impugned Judgement was delivered on 22/10/2024 the 30 days period to file an appeal lapsed on or before the 22/11/2024.
9. The Appeal herein was filed on 31/01/2025, about 2 months later without leave of the court.
10. Section 79(G) of the Civil Procedure Act provides

“

“79. G

Every appeal from a subordinate court to the High court shall be filed within of 30 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”.

11. The said provision is a substantive provision of the law and not a procedural provision of the law.
12. Having filed the appeal out of time without leave, the court lacks jurisdiction to determine the Appeal as the Memorandum of Appeal dated 31/01/2025 was filed out of time hence application dated 28/02/2025, is merited and the same is hereby allowed in terms that the Memorandum of Appeal dated 31/01/2025 is hereby struck out.
13. Costs of the application awarded to the Applicant.

**DATED AT KILGORIS THIS 19<sup>TH</sup> DAY OF JUNE 2025.**

**HON. M.N. MWANYALE**

**JUDGE**

In the presence of.

C/A – Emmanuel/Sylvia/Sandra

Ms. Yala for the Applicant

n/a for Mr.David Mackallah Appellant/ Respondent acting in person.

