

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC APPEAL NO 40 OF 2020

MARCELL GAKII (Legal administratrix of the estate of M'IRIANKI MURUNGI.....APPELLANT

VERSUS

ANDREW KABURU M'RINKURI.....RESPONDENT

(Being an appeal from the Judgment of Hon C.A Mayamba (RM)

delivered on 27/9/2017 in Meru CMCC No. 352 of 2010)

JUDGMENT

1. This appeal was dead on arrival. Reason; the same was filed in contravention of the provisions of **Section 79G of the Civil Procedure Act** which stipulates as follows;

“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 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”.

2. The judgment sought to be challenged was delivered on 27.9.2017 while the appeal was filed almost two years later on 12.6.2019. By error or design, the Record of Appeal filed on 17.12.2019 indicates that the lower court's judgment was delivered on 27.9.2019 which is obviously wrong.

3. The appellant did not bother to seek extension of time, if he did, he has not indicated so anywhere in this appeal. In the Court of Appeal case of **Daniel Nkirimpa Monirei vs. Sayialel Ole Koilel & 4 Others (2016) e KLR**, the court had struck out a Record of Appeal which had been filed outside the stipulated time-lines without leave of the court.

4. Further, it is noted that the Record of Appeal is incomplete as the statements of the witnesses which were adopted as evidence as well as the exhibits produced in the trial court have been omitted in the record of appeal. In the circumstances, I find that there is no proper appeal lodged before this court. This suit is hereby struck out with costs to the respondent.

DATED, SIGNED AND DELIVERED AT MERU THIS 28TH DAY OCTOBER, 2020

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this Judgment was given to the advocates for the parties through a virtual session via Microsoft teams on 16.9.2020. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17th March, 2020 and published in the Kenya Gazette of 17th April 2020 as Gazette Notice no.3137, this Judgment has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the *Civil Procedure Rules* which requires that all judgments and rulings be pronounced in open court.

HON. LUCY N. MBUGUA

ELC JUDGE