



Jackson v Kenya Electricity Transmission Company Limited (KETRACO) (Civil Appeal 184 of 2018) [2025] KECA 1500 (KLR) (19 September 2025) (Judgment)

Neutral citation: [2025] KECA 1500 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL 184 OF 2018
J MOHAMMED, W KARANJA & LK KIMARU, JJA
SEPTEMBER 19, 2025**

BETWEEN

SILAS KIRAI JACKSON APPELLANT

AND

**KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED
(KETRACO) RESPONDENT**

(Being an appeal from the judgment of the Environment and Land Court of Kenya at Meru (L. N. Mbugua J.) dated 14th February, 2018 in Misc. Appl. No. 44 of 2016 (O.S))

JUDGMENT

1. This is an appeal from the judgment/decree of the Environment and Land Court (ELC) at Meru delivered by L.N. Mbugua. J on 14th February 2018.
2. The respondent, Kenya Electricity Transmission Company Limited (KETRACO), a state organ mandated to construct electricity transmission lines and associated activities throughout Kenya, desired to construct the Nanyuki-Isiolo-Meru 132KV power transmission line. It carried out a feasibility study of the project and established that the line was going to pass through various parcels of land, including, Land Parcel No. Ntirititi Settlement Scheme/567 (hereinafter referred to as 'the suit property') measuring 4.86 Hectares belonging to Silas Kirai Jackson, (the appellant).
3. The respondent engaged the owners of the properties with the intention of creating easements over the said parcels. The suit property was going to be affected to the extent of approximately 1.152 Acres. It was agreed that all the land owners would be compensated at 30% of the market value of the affected acres. The appellant declined the amount of compensation offered by the respondent and termed the same as unreasonable taking into account the development prospects he had for the said land.
4. Following the appellant's rejection of the compensation offer, the respondent filed an originating summons in the Environment and Land Court at Meru vide ELC Case No 44 of 2016 (OS) under



- sections 139,149 and 150 of the *Land Act*, 2012 for the court to determine the existence of a right of way over the suit property and to intervene and grant it the right of entry for the purpose of constructing the power transmission line on its undertaking, inter alia, to deposit or pay the assessed compensation.
5. The suit was opposed by the appellant who contested the valuation saying that the suggested compensation for the intended easement over his property was not adequate nor was it commensurate to the market value.
 6. After hearing the evidence presented before the court, the learned Judge agreed with the respondent and held that the project was for the benefit of the general public whose benefits outweighed the appellant's private interests; that the appellant had failed to appoint a valuer with a view to settling the dispute over the valuation; and that it had not been demonstrated that the respondent was applying different standards or that the appellant was being discriminated against. The court approved the valuation report that had been carried out by GIMCO limited, which estimated the market value to be Kshs.600,000 per acre. A right of way (an easement) was ordered to be registered over 1.152 acres of the suit property, and the respondent was granted right of entry into the suit property to carry out its works.
 7. The appellant was aggrieved by the judgment and preferred this appeal, based on grounds, inter alia, that the learned trial Judge erred in law and in fact: in failing to find that the application before it by the respondent was defective and should have been dismissed or struck out; in refusing to give any weight to the appellants' case, documents or the valuation report; in allowing itself to be influenced by the issue of public interest disregarding the fact that the individual citizen had an interest to be protected by the court and which was in not sufficiently considered in light the pleadings, documents and the material filed by the appellants.
 8. The appellant sought orders that the appeal be allowed and the award of the ELC be set aside and a better and reasonable award be made to the appellants in terms of their valuation report and equity.
 9. During the hearing of the appeal, learned counsel Mr. Mwendwa appeared for the appellant while Mr. Patrick Wachira appeared for the respondent. Both counsel relied on their written submissions which they amplified in their brief oral highlights.
 10. We have considered both written and oral submissions made by learned counsel. Of interest, however, is that learned counsel for the respondent raised the issue of there not being a valid appeal before the Court. Counsel submitted that whereas the Notice of appeal was filed within the prescribed time, the record of appeal was filed out of time, without leave of the Court and the appeal was, therefore, incompetent.
 11. He urged the Court to determine this point first as it was a jurisdictional one, and if the appeal was incompetent, then the matter would end at that point. Counsel asserted that the appellant had not complied with Rule 84(1) of the Court of Appeal Rules, 2022 (the rules) as the record of appeal had not been filed within 60 days as prescribed. Even if the appellant were to rely on the proviso to Rule 84(2) of the Rules, he had not within 30 days of the judgment sought for a certified copy of the proceedings and judgment; that he had written a letter bespeaking proceedings 100 days after the judgment and, even then, he had not served the letter bespeaking proceedings on the respondent. Further, the appellant had not sought the extension of time, under Rule 4 of the Rules, to be allowed to lodge the appeal out of time. Counsel relied on the decisions of this Court in *Tharaka Nithi County Government & Another -vs- Gaichu & 129 Others* [2022]KECA 585 (KLR) and *Mae Properties Limited -vs- Joseph Kibe & Another* [2017]eKLR, and prayed that the appeal be deemed to be withdrawn.



12. The other preliminary challenge to the appeal was in regard to the competence of the filed record of appeal. Learned counsel for the respondent pointed out that the record of appeal was required under rule 89(1)(h) of the Rules to contain a copy of the certified decree or order, and yet what the appellant had filed was a copy of decree which had not been certified. Learned counsel submitted that, since leave had not been sought to file a supplementary record of appeal to include a certified copy of the decree, the appeal was fatally defective and incompetent. Reliance was placed on the Supreme Court's decision in *Bwana Mohamed Bwana -vs- Silvano Buko Bonaya & 2 Others* [2015] eKLR /.
13. Learned Counsel for the appellant did not file any subsequent submissions to respond to the questions relating to the competence of the appeal. After these issues were highlighted in Court during the plenary hearing, learned counsel made no rebuttal and instead said that he was leaving the matter to Court. In other words, counsel for the appellant did not controvert any of the issues touching on the competence of the appeal.
14. We have considered the record, the submissions, both written and oral and the law, which includes the authorities cited to us by counsel. This being a first appeal, our mandate as prescribed under rule 31(1) of this Court's Rules is to re-evaluate, re-asses and consider the evidence adduced before the trial court in its entirety and arrive at its own conclusion. This, nonetheless, comes with a caveat that we did not have the advantage of seeing or hearing the witnesses as they testified, and give some allowance for that. See *Selle -vs- Associated Motor Boat Company Ltd* [1968] EA 123 and *Peters -vs- Sunday Post Limited* [1985] EA 424.1
15. Before delving into the substantive appeal, we will consider the issues raised by counsel for the respondent regarding the competence of the appeal. It is good practice determine jurisdictional issues in limine, as the outcome will determine the path a matter will take. If the court finds itself bereft of jurisdiction, then the appellant is informed early enough that his appeal journey has aborted, rather prematurely, and decide on the next course of action. Does the appellant's journey end here or does he soldier on?
16. Rule 84(1) of the Court of Appeal Rules, 2022 provides as follows:
 84.
 - (1) Subject to rule 118, an appeal shall be instituted by lodging in the appropriate registry, within sixty days after the date when the notice of appeal was lodged –
 - a. memorandum of appeal, in four copies;
 - b. the record of appeal, in four copies;
 - c. the prescribed fee; and
 - d. security for the costs of the appeal: Provided that where an application for a copy of the proceedings in the superior court has been made in accordance with sub-rule (2) within thirty days after the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted, be excluded such time as may be certified by the registrar of the superior court as having been required for the preparation and delivery to the appellant of such copy.
 - (2) An appellant shall not be entitled to rely on the proviso to sub-rule (1) unless the appellant's application for such copy was in writing and a copy of the application was served upon the respondent.



17. In order for an appellant to rely on the proviso to rule 84(1), the appellant has to bring himself/herself within rule 84(2) of the Rules (above).
18. The appellant appears to have made a false start from the word “GO”. First, although the notice of appeal was filed in time, he did not within 30 days from the date of the judgment write to the trial court to ask for a copy of the proceedings. The letter was written to the trial court about 100 days following the judgment. Secondly, the letter was not copied to the respondent. Reliance could not, therefore, be placed on the proviso to rule 84(1) of the Rules. Once the appellant found himself in the circumstances of delay, he ought to have applied under Rule 4 of the Rules for extension of time to lodge the record appeal out of time.
19. No such application was made to this Court. In *Mugambi -vs- Electricity Transmission Company Ltd (KETRACO) (Civil Appeal 205 of 2018) [2023] KECA 1048 (KLR) (24 August 2023) (Judgment) and Mugambi & 4 others -vs- Electricity Transmission Company Ltd (KETRACO) (Civil Appeal 185 of 2018) [2025] KECA 125 (KLR) (7th February 2025 (Judgment) this Court stated as follows:*
- “Once the appellant found himself in the circumstances of delay, he ought to have applied under Rule 4 of the Rules for extension of time to lodge the appeal out of time...No such application was made to this Court. As was stated in *Mae Properties Limited -vs- Joseph Kibe & Another (supra)*, the notice of appeal in this matter died a natural death after the expiry of 60 days, now that time was not extended by the operation of the proviso to Rule 84(1) of the Rules, and because no request for the extension of time to file the appeal out of time was made and allowed under Rule 4 of the Rules.”
20. The consequence of this non-compliance with these mandatory provisions of the Rules is contained in rule 85(1) and (2) of the Rules as follows: -
- “(1) If a party who has lodged a notice of appeal fails to institute an appeal within the appointed time, that party shall be deemed to have withdrawn the notice of appeal and the Court may, on its own motion or on application by any other party, make such order.
- (2) The party in default under sub-rule (1) shall be liable to pay the costs arising therefrom of any persons on whom the notice of appeal was served.”
21. There is no doubt that this appeal was filed out of time, without leave of the Court. As noted earlier, the appeal does not fall within the ambit of the proviso we cited above. It is clearly an incompetent appeal. As the determination comes after the appeal itself has been heard, then it cannot be deemed as withdrawn and the only recourse is to dismiss it. The appeal is dismissed with costs to the respondent.

DATED AND DELIVERED AT NYERI THIS 19TH DAY OF SEPTEMBER, 2025

W. KARANJA

.....

JUDGE OF APPEAL

JAMILA MOHAMMED

.....

JUDGE OF APPEAL



L. KIMARU

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

