



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mrima v Nyiro (Environment and Land Appeal E010 of 2025)  
[2025] KEELC 6244 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6244 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT AND LAND APPEAL E010 OF 2025  
FM NJOROGE, J  
SEPTEMBER 25, 2025**

**BETWEEN**

**HASSAN NDAIKWA MRIMA ..... APPELLANT**

**AND**

**BENYIRA DEULE NYIRO ..... RESPONDENT**

**RULING**

1. The ruling is on application by way of a Notice of Motion by the Respondent dated 22/5/2025 brought under the provisions of Articles 40, 50 and 159 of *the Constitution* of Kenya, 2010. Sections 1A, 1B, 3A and 79G of the *Civil Procedure Act*, Order 51 Rule 1 of the Civil Procedure Rules and Section 13 (7) of the *Environment and Land Court Act*, seeking an order that the appeal be dismissed for want of jurisdiction and that costs of the application be borne by the Appellant.
2. The application is premised on the grounds on the face of the motion and the grounds in the supporting affidavit of Dominic Anaya Advocate sworn on 22/5/2025. The basis of the application is that judgment sought to be appealed was delivered on 30/10/2024 and the present appeal was filed on 13/3/2025. The Respondent avers that the appeal is incurably defective, bad in law and an abuse of the court process, since there is no proof that leave was granted to file appeal out of time.
3. The Appellant opposed the application. He filed a replying affidavit which he swore on 28/5/2025 stating that he successfully sought leave to file appeal out of time in Malindi Miscellaneous Application No. E050 of 2024; that as part of the court's directions, he was instructed to deposit a security of Kshs. 200,000/- with the court, which he did. On 13/2/2025, the Court ordered him to file and serve the substantive appeal together with submissions. The said documents were subsequently filed in the miscellaneous file, an error which was corrected on 13/3/2025.
4. In a supplementary affidavit dated 11/6/2025, Mr. Anaya stated that the Appellant was granted leave on 17/12/2024 by consent of parties to file and serve the appeal and record of appeal within 30 days



which he failed to do. He averred that the Appellant has not shown any express order from the court varying the orders of 17/12/2024.

5. The application was canvassed by way of written submissions which I have keenly considered/ yet to be filed.

### **Analysis and Determination**

6. The issue for determination is whether the appeal offends the provisions of Section 79G of the Civil Procedure Act and whether leave was ever granted to file the appeal out of time.
7. Section 79G of the Civil Procedure Act provides that every appeal from the subordinate courts shall be filed within 30 days from the date of the decree or order appealed against, excluding such time as the lower court may certify as having been requisite for preparation of the proceedings. It also provides 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.
8. In the present case, judgment was delivered on 30/10/2024 and the present appeal filed on 13/3/2025. From the evidence presented, it is clear that the Appellant filed an application dated 21/11/2024 seeking stay of execution and leave to lodge appeal out of time. The application was filed in ELC Misc. Application No. E050 of 2024 and was determined on 17/12/2024. The Hon. Justice Makori ordered as follows:
  - “1. That by consent, stay of execution is hereby allowed; Kshs. 200,000 be deposited in this Court within 30 days hereof;
  2. That a Record of Appeal be prepared and served within 30 days hereof;
  3. That a response be filed within 14 days after service;
  4. That further mention on 13<sup>th</sup> February, 2025.”
9. It is evident that the timelines imposed by the court were not complied with. There is no evidence on record showing what transpired on 13/2/2025 or any indication that the Appellant sought an extension or regularization of his position thereafter.
10. Further, while the Appellant claims that the court granted him 14 more days on 13/3/2025 to file and serve a substantive appeal and submissions, there is no record or extract of proceedings to support this assertion. In the absence of such documentation, and in light of the Appellant’s unexplained delay, this court is constrained to find that the leave granted lapsed long before the appeal was eventually filed.
11. The appeal, having been filed outside the timelines set by the court and without any extension or justification, is incompetent. This court is devoid of jurisdiction to entertain it.
12. Accordingly, the Notice of Motion dated 22/5/2025 is allowed. The appeal is hereby struck out. The Appellant shall bear the costs of the application.

**DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI.**

