



**County Government of Mombasa v Shazmeer Enterprises Limited (Civil Application E092 of 2024) [2025] KECA 1539 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1539 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT MOMBASA  
CIVIL APPLICATION E092 OF 2024  
AK MURGOR, JA  
OCTOBER 3, 2025**

**BETWEEN**

**COUNTY GOVERNMENT OF MOMBASA ..... APPLICANT**

**AND**

**SHAZMEER ENTERPRISES LIMITED ..... RESPONDENT**

*(An application for extension of time to file an appeal out of time against the decision of (L.L. Naikuni, J.) dated and delivered on 20th May, 2024 in ELC Constitutional Petition No. E007 of 2021)*

**RULING**

1. In this application the Applicant, County Government of Mombasa seeks leave to file an appeal out of time against the Judgment of the High Court of Kenya in Mombasa delivered in favour of the Respondent, Shazmeer Enterprises Limited on 20<sup>th</sup> May 2024.
2. In the Notice of motion dated 30<sup>th</sup> July 2024 brought under Section 3, 3A and 3B of the [Appellate Jurisdiction Act](#), Cap 9 and Rule 4 of the Court of Appeal Rules, 2022 the Applicant seeks orders that: i) leave be granted to the Applicant to lodge an Appeal out of time against the Judgment of the Environment and Land Court delivered in (Mombasa ELC Constitutional Petition E007 of 2021 Shazmeer Enterprises Limited vs. County Government of Mombasa on 20<sup>th</sup> May, 2024.) ii) the Notice of Appeal filed electronically on 5<sup>th</sup> June, 2024 against the Judgment of 20<sup>th</sup> May, 2024 be deemed as admitted and properly on record and that time to file the Notice be deemed to have be extended; or iii) Alternatively, this Court be at liberty to make any further orders in the interest of justice.
3. The motion was premised on the grounds that following the delivery of the Judgment on 20<sup>th</sup> May, 2024, the Applicant filed a Notice of Appeal on 5<sup>th</sup> June, 2024; that, the Notice should have been lodged by 3<sup>rd</sup> June 2024 and was therefore filed two days late; that the delay in lodging the Notice of Appeal was occasioned by the fact that, the Judgment was delivered in the absence of counsel for the



Applicant, due to counsel's inadvertent omission in diarising the date for delivery of the Judgment; that thereafter, the Applicant only came to learn that the Judgment was delivered on 5<sup>th</sup> June 2024 whereupon it promptly filed the Notice of Appeal.

4. It was contended that, the intended Appeal has merit based on the grounds set out in the draft Memorandum of Appeal annexed to the Affidavit in support of the Motion; that the Respondent will not suffer any prejudice if the orders sought were granted, as it is in possession of the suit property, that is Mombasa/MS/Block 1/674 Likoni, Mombasa; that the Applicant has an arguable appeal with good prospects of success and that the appeal will be rendered nugatory should the Court fail to grant the orders sought, and that the motion was brought without unreasonable delay.
5. The motion was supported by the affidavit of Elizabeth Kisingo sworn on 30<sup>th</sup> July 2024 which largely reiterated the contents of the motion, and to which several exhibits were annexed, including a copy of the relevant page of her diary, the Judgment, the Notice of Appeal and the request for proceedings, and an email confirming service of these documents on the Respondent's advocates.
6. It was averred that upon receipt of the Judgment on 5<sup>th</sup> June, 2024, the Applicant being aggrieved by the Judgment electronically filed its Notice of Appeal and a letter requesting for a copy of typed proceedings on 5<sup>th</sup> June, 2024; and at the same time, served a copy of the Notice of Appeal and requested for typed and certified copy of proceedings via email on the Respondent on 5<sup>th</sup> June, 2024: that, the Notice ought to have been lodged by 3<sup>rd</sup> June, 2024 and was therefore filed two days late, because, the Advocate was not present in Court on 20<sup>th</sup> May, 2024 when the Judgment was delivered for the reason that counsel omitted to diarise the Judgment date.
7. It was further averred that members of the public who will be affected by the Judgment stand to be condemned unheard if the orders for extension sought are not granted, and that it is only fair and in the interest of justice that the Applicant be given an opportunity to prosecute its Appeal which should be determined on its merits.
8. By a supplementary affidavit filed by Mr. Murtaza Tajbhai, the County Solicitor for the Applicant sworn on 3<sup>rd</sup> June 2025 it was deposed with respect to the Notice of Motion dated 20<sup>th</sup> February 2025 that, the email address for service of the hearing notice was served through Mr. Tajbhai's personal address, which ought not to have been the case, as Ms. Kisingo who had conduct of the matter should have been served. It was also deposed that the instant application seeks to allow the Applicant leave to appeal out of time and there was nothing to dismiss or strike out in the application filed by the Respondent in Civil Application No. E067 of 2024 Shazmeer Enterprises Limited vs County Government of Mombasa.
9. In a replying affidavit sworn on behalf of the Respondent by Willis O. Oluga, Advocate on 29<sup>th</sup> May 2025, it was deposed that in the instant Notice of motion dated 31<sup>st</sup> July 2024, the Applicant seeks to reinstate the Notice of appeal dated 5<sup>th</sup> June 2024; that when the Respondent was served with the Notice of appeal on 5<sup>th</sup> June 2024, it filed an application dated 14<sup>th</sup> June 2024 in this Court, that being Civil Application No. E067 of 2024 Shazmeer Enterprises Limited vs County Government of Mombasa seeking to strike out the Notice of Appeal for having been filed out of time; that the Respondent's motion having been filed earlier in time was fixed for hearing; that the Notice of appeal was subsequently struck out by an order of this Court on 19<sup>th</sup> March 2025; that as a consequence, this motion seeking orders to extend time and deem the Notice of appeal dated 5<sup>th</sup> June 2024 as properly filed has been overtaken by events, and the orders sought are not capable of being granted.
10. It was further contended that with the Notice of appeal having been struck out, this Court has no jurisdiction to hear this application for extension of time; that the explanation by the Applicant's



counsel that the hearing notices escaped their attention do not hold, and their explanation that counsel's mistakes should not be visited on the client is without a basis.

11. When the application came up for hearing on a virtual platform, learned counsel Mr. Tajbhai appeared for the Applicant, while learned counsel Mr. Oluga appeared for the Respondent. Both parties filed written submissions. Counsel for the Applicant relied on their submissions in entirety, but went on to submit that the instant application seeks leave to lodge an appeal out of time, and for the Notice of appeal filed on 5<sup>th</sup> June 2024 to be deemed as duly filed.
12. Briefly submitting on behalf of the Respondent, counsel opposed the application and stated that, the instant application seeks to reinstate the appeal, by seeking for time to be extended to file the Notice of appeal that was filed out of time. It was contended that the Notice of appeal was struck out by this Court on 19<sup>th</sup> March 2025 in Civil Application No. E067 of 2024 Shazmeer Enterprises Limited vs County Government of Mombasa. It was argued that the Notice of appeal having been struck out, this Court has no jurisdiction to hear and determine the instant application, and further, the Applicant has not provided any viable reason for its failure to attend court on 19<sup>th</sup> March 2025 when the Notice of appeal was struck out.
13. Having considered the Notice of motion, the affidavits and the rival submissions of the parties, the issues that arise for determination are; i) whether this Court has jurisdiction to hear this application and if so, whether time should be extended to file and serve the Notice of appeal dated 5<sup>th</sup> June 2024 or to deem the Notice as duly filed and served.
14. Jurisdiction empowers a court to entertain an action, petition or other proceedings. Jurisdiction is everything and without it a court cannot make one more step. In the celebrated case of Owners of The Motor Vessel "Lillian S vs Caltex Oil (Kenya) Ltd [1989] KECA 48 (KLR) which Nyarangi, JA. opined that:

"I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."
15. The Applicant in this case filed a Notice of appeal dated 5<sup>th</sup> June 2024 against a decision of the trial court, which Notice it has indicated was filed out of time by 2 days. By the instant Notice of motion dated 31<sup>st</sup> July 2024, the Applicant sought to extend the time for filing of the Notice appeal and for the Notice of appeal to be deemed as properly filed. By this time, the Respondent had already filed a Notice of motion dated 14<sup>th</sup> June 2024, that being Civil Application No. E067 of 2024 Shazmeer Enterprises Limited vs County Government of Mombasa seeking to strike out the Notice of appeal for the reason that it was out of time. Since the Respondent's motion was filed earlier in time, it was fixed for hearing, and on 19<sup>th</sup> March 2025, the application was allowed, with the result that, the Applicant's Notice of appeal dated 5<sup>th</sup> June 2024 was subsequently struck out.
16. In effect, the Notice of appeal having been struck out by this Court on 19<sup>th</sup> March 2025, what emerges is that there is no longer an appeal before this Court. This means that the Applicant's instant Notice of motion that was filed on 31<sup>st</sup> July 2024, and founded on the Notice of appeal dated 5<sup>th</sup> June 2024, no longer had a basis on which to stand, in view of the Notice of appeal having been struck out. Conversely, without the Notice of appeal, this application that was filed prior to the Notice being



struck out, is clearly overtaken by events. Consequently, this Court lacks jurisdiction to hear and determine this application, given that the Notice of appeal dated 5<sup>th</sup> June 2024 was struck out.

17. In sum, the Notice of motion dated 31<sup>st</sup> July 2024, be and is hereby dismissed with costs to the Respondent.

It is so ordered.

**DATED AND DELIVERED IN MOMBASA THIS 3<sup>RD</sup> DAY OF OCTOBER, 2025**

**A. K. MURGOR**

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**JUDGE OF APPEAL**

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR

