



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT MERU

ELC LAND APPEAL CASE NO. E004 OF 2024

JOHN GITEMBA KIRUTHU.....

.....APPELLANT

=VERSUS=

EVELYN

KONJE.....

.....RESPONDENT

RULING

1. This appeal challenges a ruling rendered by the Chief Magistrate Court at Meru on 16/1/2024 on a notice to show cause why the decree of the lower court should not be executed. The notice to show cause was presented by the respondent against the appellant. The Chief Magistrate Court allowed execution of the decree. Aggrieved by the ruling, the appellant brought the appeal without prior leave of the court.
2. At the stage of admitting the appeal, the court enquired to know whether leave to appeal was necessary, and if in

the affirmative, whether it was obtained. The court gave parties time to prepare and attend court to address it on the above jurisdictional issue.

3. Parties attended court on 7/10/2025 through their respective advocates and addressed the court. **Ms Kerubo**, counsel for the appellant, submitted that the appellant did not require leave. She stopped at that. **Ms Nelima**, counsel for the respondent, submitted that the impugned decision was rendered in exercise of jurisdiction under Order 22 of the Civil Procedure Rules and emphasized that leave was required.
4. The court has considered the jurisdictional issue. The impugned ruling was rendered on 16/1/2024. The subject of the ruling was a notice presented by the respondent requiring the appellant to show cause why the decree of the lower court should not be executed against him. The notice to show cause was taken out under **Order 22 rule 17** of the **Civil Procedure Rules**.
5. **Section 75** of the **Civil Procedure Act** and **Order 43** of the **Civil Procedure Rules** provide frameworks on orders/decisions against which leave to appeal is not required. Under **Order 22** of the **Civil Procedure Rules**, the orders/decisions against which leave is not required are those made in exercise of jurisdiction under **rules 25, 57, 61(3)** and **73** of the Civil Procedure Rules. Appeals challenging orders/decisions made in exercise of jurisdiction under the rest of **Order 22** require prior

leave to appeal. Put differently, an appeal challenging an order made on a notice to show cause requires prior leave of the court.

6. The effect is that, the present appeal required leave. None was sought and obtained. Consequently, this court has no jurisdiction to entertain this appeal in the absence of prior leave. Put differently, the appeal is fatally defective and stands to be struck out. The appeal is accordingly struck out.
7. On costs, the general principle in Section 27 of the Civil Procedure Act is that, costs follow the event. No proper grounds have been demonstrated to warrant a departure from the general principle. Consequently, the appellant shall bear costs of the appeal. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 8TH DAY OF OCTOBER, 2025.

**B M EBOSO [MR]
ELC JUDGE**