



**Maundu v Ngui (Environment and Land Appeal E014 of 2025)
[2025] KEELC 6499 (KLR) (1 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6499 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT AND LAND APPEAL E014 OF 2025
EO OBAGA, J
OCTOBER 1, 2025**

BETWEEN

RONALD MAUNDU APPELLANT

AND

PETER KIMEU NGUI RESPONDENT

RULING

1. This is a ruling in respect of a preliminary objection by the Respondent dated 6th August, 2025 on the following two grounds:
 - a. The appeal is incompetent and in contravention to Section 79G of the *Civil Procedure Act* for being filed out of time and without leave. This court therefore lacks jurisdiction to entertain these proceedings.
 - b. The appeal is otherwise incompetent and bad in law as it is an appeal from both SPM Milimani SCCCOMM No. E5297/2024 and Makindu SPM ELC No. 48 of 2019 thus untenable.
2. The Appellant filed a memorandum of Appeal dated 19th May, 2025 against a ruling of Makindu Senior Principal Magistrate Hon. Evans Mbicha dated 10th April, 2025. The Appellant contemporaneously filed a notice of motion of even date in which he among other orders sought stay of execution of the ruling of 10th April, 2025.
3. The court directed that the preliminary objection be argued orally. The Respondent's counsel Mr. Makundi argued that the appeal was filed outside the required time without leave of court. He urged the court to strike out the appeal for being incompetent.
4. The Appellant's counsel Ms. Njagi conceded that indeed the appeal was filed outside the period given but that that was an oversight on their part and that she has since filed an amended notice of motion dated 12th August, 2025 in which she seeks leave of court to file the appeal out of time.



5. I have considered the submission by Mr. Makundi and those of Ms. Njagi. Section 79 G of the Civil Procedure Act provides 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 to the appellant 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”.

6. A reading of Section 79G shows that appeals from the subordinate courts are supposed to be filed within 30 days. In computing the 30 days, the court is supposed to exclude any period which may be certified by the lower court having been requisite for the preparation and delivery to the appellant of a copy of the decree or order.

7. In the instant case, the ruling of the lower court was delivered on 10th April, 2025. The memorandum of appeal was filed on 19th May, 2025 which was outside the period required. There is no certificate issued by the lower court to show when the order was delivered to the appellant. In the absence of this, it is clear as was conceded by the appellant’s counsel that the appeal was filed outside the 30 day period without leave of court.

8. The application to seek leave was filed after the preliminary objection had been filed and the court cannot ignore the preliminary objection and proceed to hear the amended notice of motion which is seeking to cure the anomaly of the appeal which was filed outside the 30 days required and without leave. I therefore find that the memorandum of appeal dated 19th May, 2025 is incompetent. It is hereby struck out with costs to the Respondent.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 1ST DAY OF OCTOBER, 2025.

IN THE PRESENCE OF:

Ms. Gitonga for Appellant.

Ms. Nzilani for Mr. Makundi for Respondent.

Court assistant - Steve Musyoki

