



**Gateru v Chege (Environment and Land Appeal E006 of 2025)
[2025] KEELC 5678 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5678 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENT AND LAND APPEAL E006 OF 2025**

JM KAMAU, J

JULY 31, 2025

BETWEEN

JOHN KURIA GATERU APPELLANT

AND

PAUL MAINA CHEGE RESPONDENT

RULING

1. The suit against which the Applicant seeks to Appeal was delivered on 27/2/2025 at Engineer Principal Magistrate's Court ELC NO E007 OF 2024 by the Honourable Principal Magistrate, the Honourable Wanjala. Inadvertently, the Applicant filed the Appeal in Nyandarua High Court being High Court Civil Appeal number E012 OF 2023 instead of filing it in this Court.
2. This inadvertence was never discovered until the said Court ordered that the Appeal be withdrawn and filed in the appropriate Court, which happens to be this Court. This was on 4/4/2025. Four days later, this Application was filed under section 79G of the *Civil Procedure Act* and Order 51 Rule 1 of the *Civil Procedure Rules*.
3. In his Affidavit in support sworn on even date, the Applicant claims that filing of the Appeal in the wrong Court was not deliberate but a genuine human omission and/or inadvertent oversight on the part of the Applicant's Counsel which mistake according to the Applicant should not be visited on the Litigant.
4. The Respondent filed a Replying Affidavit sworn on 13/5/2025 wherein she countered the Applicant's Application by saying that ignorance of law cannot be the basis of exercise of the Court's discretion to enlarge time for filing the envisaged Appeal. Above all, the Applicant was represented by Counsel and that this Application is calculated to delay the Respondent's enjoyment of the fruits of judgment sought to be appealed from. Further, the Respondent laments that the Applicant has not paid the costs in the withdrawn Appeal and is therefore not entitled to file a new case against him.



Section 79G of the Civil Procedure Act provides that: -

“ Every appeal from a subordinate Court shall be filed within a period of thirty days from the date of the Decree or Order appealed against , excluding from such period ant time which the lower Court may certify as having requisite....”

The proviso thereof states that:-

“provided that an Appeal may be admitted out of time if the Appellant satisfies the Court that he had a good and sufficient cause for not filing the Appeal in time”.

5. From the above, the Applicant has not given this Court any sufficient reason to justify him being granted leave to file an Appeal out of time. I agree with the Respondent that the Applicant was being represented by Counsel and this makes the principle that ignorance of law is no excuse become even more applicable.
6. The judgment and all pleadings from the lower Court indicated quite clearly that the suit emanated from a subordinate Court with an ELC serial number. I therefore fail to understand how the Applicant’s Counsel would have failed to know that a Judgment of a land matter from a subordinate Court can only be appealed to an ELC Court and not the High Court.
7. The filing of the Appeal in the High Court must have been due to carelessness on the part of the Applicant’s Counsel which cannot be excused at all. But I don’t agree with the Respondent that to approach this Court for extension of time does not mean that he had to pay the Respondent’s costs for the wrongly filed Appeal first. In any case, the same is yet to be taxed. What is he therefore supposed to pay before taxation?
8. It is however unfortunate that it took the Applicant a whole 2 months to discover that he was in a dark thick bush.
9. This is a discretionally prayer /plea and the Court is ready to excuse the Applicant who believed all along that he was in very safe hands and had all the confidence that he was in the right Court. However, the Applicant shall not go scot free. He has to pay for his mistakes. I therefore order that the Applicant be and is hereby granted leave to file Appeal against the Judgment of the Honourable E. Wanjala, Principal Magistrate dated 27/2/2025 in Engineer Principal Magistrate’s Court ELC No. E009 of 2024 within the next 7 days from the date hereof. The Applicant will also have to pay to the Respondent’s Advocates the sum of Kshs. 15,000/= being the costs of this Application within the next 30 days failure to which the Appeal even if already filed will automatically stand struck out for non-conformity with the condition attached to this order.

RULING READ AND DELIVERED IN NYANDARUA THIS 31ST JULY 2025.

HON MUGO KAMAU

JUDGE

In the Presence of:-

Court Assistant: Samson.

.....for the Applicants.

..... for the Respondent.

