

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT AT NAIROBI
ELCA NO. E057 OF 2024

GEORGE WARUI GATHONI - **APPELLANT**

VS

JAMES GICHURE KIRAGU - **RESPONDENT**

RULING

(In respect to the Preliminary objection dated 10/1/25)

1. The respondent objected to the appeal on the grounds that it was filed more than three years after the decision being appealed against was made, which is contrary to Section 79G of the Civil Procedure Act and should be dismissed. They also argued that the appeal is legally invalid, vexatious, and an abuse of court process.
2. The court directed the parties to file written submissions, but only the respondent complied. I have read and considered the submissions, which now form part of this ruling.
3. The key issue for determination is whether the objection is a pure point of law.
4. The record before the court shows that, aggrieved by the decision of the tribunal rendered on 5/11/2021, the appellant lodged an appeal before this court by way of a memorandum of appeal dated 23/4/224.
5. Section 15 of the Landlord & Tenant (Shops, Hotels & Catering Establishments) Act states that any party to a reference aggrieved by any determination or order of a tribunal made therein may, within 30 days after the date of such determination or order, appeal to the Environment and Land Court.
6. Similarly, Section 79G of the Civil Procedure Act stipulates that every appeal from the subordinate court to the High Court shall be filed within a period of 30 days from the date of the decree or order appealed against, excluding from such period the time which the lower court may certify as having been necessary 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 on time.

7. To the extent that the appellant has not demonstrated that leave to file an appeal out of time was sought and obtained, I find that the appeal before the court is incompetent and it is hereby dismissed with no orders as to costs.
8. The Preliminary Objection, therefore, is merited. It is upheld. The appeal is consequently incompetent and is hereby struck out.
9. Orders accordingly

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 21ST
DAY OF OCTOBER 2025 VIA MICROSOFT TEAMS.**

**J. G. KEMEI
JUDGE**

Delivered Online in the presence of:

1. Appellant is present in person
2. N/A for the respondent
3. CA- Ms Yvette Njoroge