



REPUBLIC OF KENYA



**Mutiso v Mwendu (Environment and Land Case E364 of 2022)
[2025] KEELC 7642 (KLR) (31 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7642 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E364 OF 2022**

TW MURIGI, J

OCTOBER 31, 2025

BETWEEN

ONESMUS MUTHOKA MUTISO PLAINTIFF

AND

NANCY RITA MWENDE DEFENDANT

RULING

1. By a Notice of Motion dated 4th December 2024 brought under Article 48 of *the Constitution*, Sections 1A, 1B, 33A and 79G of the *Civil Procedure Act*, Section 16 of the *Environment and Land Court Act* and Order 42 Rule 6, Order 50 Rule 6 and Order 51 of the Civil Procedure Rules, the Applicant seeks the following orders:-
 - i. Spent.
 - ii. That leave be granted to the Applicant herein to lodge a Notice of Appeal out of time against the entire judgment and decree of the court dated 22nd October 2024 in ELC Case No. E364 of 2022.
 - iii. That consequently, the Memorandum of Appeal annexed to this application be considered as duly filed and admitted.
 - iv. That this Honourable Court be pleased to stay execution of the decree in ELC Case No. E364 of 2022 pending hearing and determination of this application.
 - v. That this Honourable Court be pleased to stay execution of the decree in ELC Case No. E364 of 2022 pending hearing and determination of the intended appeal.
 - vi. That costs be provided for.



2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Onesmus Muthoka Mutiso, sworn on even date.

The Applicant's Case

3. The Applicant averred that his suit was dismissed with costs in a judgment delivered on 22nd October 2024. Being aggrieved, he directed his Counsel to lodge an appeal. However, upon checking with Counsel, he found that the appeal had not been filed as instructed.
4. He further stated that he instructed his current lawyers to pursue the appeal and was informed that he should have filed a Notice of Appeal within 14 days of the judgment.
5. He maintained that this court has the discretion to extend the time for filing a Notice of Appeal.
6. He asserted that the appeal has a high chance of success, and he would be prejudiced to pay costs of the suit.
7. The Applicant is apprehensive that the Respondent will commence execution against him, which would render his appeal nugatory.

The Respondent's Case

8. The Respondent filed a replying affidavit dated 14th February 2025 in opposition to the application.
9. She asserted that the application is incompetent, belated, an abuse of the court process, and should be dismissed with costs.
10. She also stated that the Applicant's supporting affidavit was tainted with contradictions, innuendos, blatant lies, and misrepresentations intended to prejudice the court and should be struck out.
11. She further stated that the Applicant's current advocate has no audience before the court because they have not complied with the provisions of Order 9 Rule 9 of the Civil Procedure Rules.
12. According to the Respondent, the Applicant had not met the threshold for filing an appeal out of time.
13. It was argued that the delay in filing the application was inordinate and that there was no reasonable explanation for the same.
14. She asserted that litigation must come to an end so that she can enjoy the fruits of her judgment.
15. The application was canvassed by way of written submissions. Both parties filed their submissions, which I have duly considered.

Analysis And Determination

16. Having considered the application, the respective affidavits, and the rival submissions, the issue that arises for determination is whether the application is properly before the court.
17. The Respondent argued that the application is a non-starter for want of compliance with the law. She further argued that the Applicant's Counsel lacks locus for failing to comply with Order 9 of the Civil Procedure Rules.



18. Order 9 Rule 9 of the Civil Procedure Rules states that;

When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—

- (a) upon an application with notice to all the parties; or
- (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person, as the case may be.

19. It is evident that before a Notice of change of Advocate can be filed after judgment has been delivered, it must be preceded by either an application wherein an incoming advocate seeks leave to come on record for a party or by a consent between the outgoing and proposed incoming advocate or party intending to act in person, as the case may be.

20. The provisions of Order 9 Rule 9 of the Civil Procedure Rules make it mandatory that for any change of Advocates after judgment has been entered to be effected, then there must be an order of the court upon application with notice to all or upon a consent filed between the outgoing advocate and the proposed incoming advocate.

21. In the matter at hand, the Applicant's Counsel without leave of the court came on record for the Applicant without filing of any document to effect the change. The procedure set out under Order 9 Rule 9 is mandatory and cannot be termed as a mere technicality.

22. Having found that this procedure was not followed by M/S Musyoka Murambi and Associates, the said firm is not properly on record and has no standing to move the court on behalf of the Applicant.

23. In the circumstances the application dated 4th December 2024 is struck out with costs.

RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 31ST DAY OF OCTOBER, 2025.

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HON. T. MURIGI

JUDGE

In The Presence Of: -

Ms. Nakoye holding brief for Ms. Njuguna for Respondent

Ahmed – Court Administrator

