



REPUBLIC OF KENYA



KENYA LAW
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Kenya Wildlife Service v Wanja; Kenya Commercial Bank (Interested Party) (Civil Appeal E077 of 2025) [2025] KEHC 14768 (KLR) (14 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14768 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E077 OF 2025
SM GITHINJI, J
OCTOBER 14, 2025**

BETWEEN

KENYA WILDLIFE SERVICE APPELLANT

AND

ROSE WANJA RESPONDENT

AND

KENYA COMMERCIAL BANK INTERESTED PARTY

RULING

1. For determination is the Notice of Motion dated 22/4/2025 under Order 2 Rule 15 (1) (d) and Order 51 Rule 1 of the Civil Procedure Rules, seeking that:
 1. Spent
 2. Spent
 3. This honourable court be pleased to strike out the appeal herein dated 2nd April 2025 and filed in court on 4th April 2025.
 4. This honourable court be pleased to direct the interested party to make good the garnishee absolute dated 16th January 2025 in Meru SCCC No. E759 of 2024.
 5. Costs of this application be borne by the appellant/applicant.
2. The application is predicated on the grounds that the Applicant sued the Appellant in Meru SCCC No. E759/2024 wherein judgment was delivered in her favour on 17/10/2024. The Appellant successfully obtained 14 days' leave to appeal out of time on 20/3/2025, which leave lapsed on or about 2/4/2025, and the Applicant sought to proceed with execution of the decree by enforcing the garnishee absolute in the primary suit. This appeal, having been filed on 4/4/2025 was filed out of time,



and the stay order previously in place have equally lapsed. The Appellant has directed the Interested Party herein not to make good the garnishee absolute under the guise of a pending appeal awaiting determination. It is for these reasons that the Applicant urges the court to strike out the appeal with costs, and bring the litigation herein to an end, because the Appellant has turned into a vexatious litigant.

3. Gideon K. Mutai, the Respondent's Legal Officer swore a Replying Affidavit on 16/5/2025 in opposition to the application. He averred that the appeal was duly filed on 4/4/2025 within 14 days as directed by the court on 20/3/2025, and pursuant to Order 50 Rule 8 of the Civil Procedure Rules, the 14 days for filing the appeal started running from 21/2/2025 and ended on 4/4/2025. In computing the 14 days granted by the court to file the appeal, public holidays are excluded and therefore 31/3/2025, should be excluded pursuant to Order 50 Rule 8 of the Civil Procedure Rules. The appeal having been duly filed, the order staying execution of the decree of the lower court as granted by the court is valid and the garnishee order absolute cannot be enforced. In any event, the appeal is arguable with high probability of success, and the court should prefer substantive justice over procedural technicalities.
4. The application was argued orally in court on 3/7/2025 and ruling reserved.

Determination

5. Order 50 Rule 8 of the Civil Procedure Rules provides as follows; "In any case in which any particular number of days not expressed to be clear days is prescribed under these Rules or by an order or direction of the court, the same shall be reckoned exclusively of the first day and inclusively of the last day."
6. On 20/3/2025, the Appellant was granted 14 days' leave to file its appeal. The time for filing the appeal was to run from 21st March 2025 to 3rd April 2025. The Appellant filed its appeal a day late on 4/4/2025, because 31st March 2025 was declared to be a Public Holiday. I am of the considered view that the appeal was filed within time, because time did not run on 31st March 2025, which was a Public Holiday. Needless to state, striking out an otherwise arguable appeal solely on the basis that it was filed with a delay of 1 or 2 days, would be an affront to the Constitutional dictates to render substantive justice without undue regard to procedural technicalities.
7. The upshot from the foregoing considerations is that the application dated 22/4/2025 is in want of merit, and it is hereby dismissed. Cost in the cause.

DATED AND DELIVERED AT MERU THIS 14TH OCTOBER, 2025

S.M. GITHINJI

JUDGE

Apperances:-

Mr. Mutai for the Appellant/Respondent.

Mr. Mwenda for the Respondent.

COURT:

Mention to confirm filing of Record of Appeal and further directions on -16/3/2026.

14/10/2025

