



**Wathanga & 2 others v Joseph & another (Environment and Land Appeal E003 of 2023) [2025] KEELC 7300 (KLR) (28 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7300 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND APPEAL E003 OF 2023**

**AY KOROSS, J**

**OCTOBER 28, 2025**

**BETWEEN**

**GLADYS WANJIRU WATHANGA ..... 1<sup>ST</sup> APPELLANT**

**MARY WANGUI WAMBUGU ..... 2<sup>ND</sup> APPELLANT**

**ISAAC THUKU WAHOME ..... 3<sup>RD</sup> APPELLANT**

**AND**

**SAMSON MUKEKU JOSEPH ..... 1<sup>ST</sup> RESPONDENT**

**JOHN MWITI ..... 2<sup>ND</sup> RESPONDENT**

*(Appeal from the judgment of Hon. E. Olwande, CM, delivered on 23/12/2021 in Mavoko CM's Court ELC Case No. E003 of 2021 (Gladys Wanjiru Wathanga & 2 Others versus Samson Mukeku Joseph))*

**RULING**

1. This case had been reserved for judgment today, but, unfortunately, this court is constrained to deliver a ruling instead of a judgment, for reasons that a record of appeal has not been filed despite court directions.
2. To contextualise this background and court directions, it is necessary to refresh the parties' memories on the history of the appeal. Being aggrieved by the decision of the lower court, the appellant lodged a memorandum of appeal dated 24/04/2023, against the ruling of the learned trial magistrate that was rendered on 23/12/2021. It is not lost to this court that this appeal was obviously filed out of time; nevertheless, in the absence of a record of appeal, this court is unable to satisfy itself whether leave was ever granted to the appellant to file an appeal out of time.



3. Reverting to the substance of the ruling, when Mr Wati, for the appellants and Mr Malanga, for the respondents, appeared before this court for directions on the hearing of the appeal, it was observed by the court that the record of appeal contravened the provisions of practice direction no. 42 of the Environment and Land Court [ELC] contained in the gazette notice no. 5178, which requires, amongst others, that a record of appeal contain an index of all documents in the record with the number of pages at which they appear.
4. With this legal proviso in mind, as read together with practice direction no. 43 thereof, which donates vast power to the court to impose sanctions, including striking out of pleadings, while also considering the overriding interests of justice, the court struck out the impugned record of appeal dated 24/07/2023 and directed Mr Wati to file a compliant one within 14 days thereof, and in default, any document filed out of time would automatically stand struck off.
5. Nonetheless, for reasons best known to him, Mr Wati never complied with these directions, and when he appeared before this court on 5/06/2025, he never sought an extension of time for consideration by the court. Hence, this court finds there is no record of appeal before it and also finds that the appellant did not comply with court directions. In the circumstances and being guided by the provisions of practice direction no. 43, this court hereby strikes out the appeal with costs to the respondents.
6. It is so ordered.

**DELIVERED AND DATED AT MACHAKOS THIS 28<sup>TH</sup> DAY OF OCTOBER, 2025 VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM.**

**HON. A. Y. KOROSS**

**JUDGE**

In the presence of;

Ms Kanja Court Assistant.

Mr. Kivuva for the respondent.

Mr. Wati for the appellant.

