



REPUBLIC OF KENYA



KENYA LAW
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**Muriithi & another v Mucuku & 2 others (Civil Appeal E086 of 2024)
[2025] KEHC 15032 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15032 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL E086 OF 2024
EM MURIITHI, J
OCTOBER 23, 2025**

BETWEEN

FELISTA WAIRIMU MURIITHI 1ST APPELLANT

BEATRICE MICERE MUCHUKU 2ND APPELLANT

AND

MUTHONI MUCUKU 1ST RESPONDENT

JULIANA MURINGO MUCURU 2ND RESPONDENT

DAVID KARIUKI MUCUKU 3RD RESPONDENT

RULING

1. The applicant/respondents filed a Preliminary Objection dated 21st February, 2025 and put forth the following grounds:
 1. That the Appeal has been filed after the lapse of 93 days and is therefore filed out of time and is thus in contempt of the Orders of Hon. Justice Mwongo Richard Mururu dated 11th November, 2024.
 2. That in reference to the above, the succession Proceedings in Chief Magistrates Court at Kerugoya Succession Cause No. E069 of 2023 recommenced on 13th December, 2024 as per the Orders of Hon. Justice Mwongo Richard Mururu's dated 11th November, 2024 as the same have never been appealed against, reviewed or set aside.
 3. That the Appellants have disregarded/ignored Orders by this Honourable Court to have the proceeds of the Estate deposited in a joint interest earning account as per the Orders of Hon. Justice Wakiaga J issued on 21st August 2024.



4. That the Supplementary Record of Appeal has been filed un-procedurally and without the leave of this Honourable Court.
5. That the Appellants have no regard for the Orders issued by this Court and the Appeal contravenes other mandatory provisions of the law and thus ought to be dismissed with costs.

Applicant's submissions

2. They submit that the Preliminary objection by the Respondents is on the issue of the alleged disobedience of Orders by Wakiaga, J and Mwongo, J on depositing of lease money in a joint account and filing of a supplementary record of appeal, and contend that these issues will require this Honourable Court to delve into contested matters of fact, including the reasons for the timing of the appeal, the unavailability of documents, and whether there was wilful disobedience of Court Orders. If it is the Respondent's case that the Appellants have disobeyed Court Orders, they were at liberty to file an application for contempt or file an application for striking out of the supplementary record of appeal.
3. Lastly, under Article 159(2)(d) of *the Constitution*, they urge that Courts are enjoined to administer justice without undue regard to procedural technicalities.

Respondents submissions

4. The Respondents submit that court orders are meant to be obeyed and complied with. In *Econet Wireless Kenya Ltd vs. Minister for Information & Communication of Kenya & another* [2005] 1 KLR 828 Ibrahim, J (as he then was) stated:

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our Courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a Court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void”.
5. Citing *Central Bank of Kenya & Another vs. Ritalal Automobiles Limited & Others* Civil Application No. Nai. 247 of 2006, the respondents submit that the appellant's appeal should be dismissed for failure to comply with court orders.

Issue for determination

6. Whether the Notice of Preliminary Objection has merit.

Analysis

7. The applicant has raised the preliminary objection on the ground that the Appeal has been filed after the lapse of 93 days and is therefore filed out of time and is thus in contempt of the Orders of Hon. Justice Mwongo Richard Mururu dated 11th November, 2024. Further, that the Appellants have disregarded/ignored orders by this Honourable Court to have the proceeds of the Estate deposited in a joint interest earning account as per the Orders of Wakiaga J issued on 21st August 2024.



8. The essence of a preliminary objection was given by Law, JA and Sir Charles Newbold P. in *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors* [1969] EA 696. The Court held as follows:-
- “...a ‘preliminary objection’ consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”
9. The applicants/respondents case is that court orders are meant to be obeyed and complied with.
10. In *Central Bank of Kena & Another vs. Ratilal Automobiles Limited & Others* Civil Application No. Nai. 247 of 2006, the Court of Appeal held that Judicial power in Kenya upheld the fundamental tenet of the rule of law that court orders must be obeyed and it is not open to any person or persons to choose whether or not to comply with or to ignore such orders as directed to him or them by a Court of law.
11. The appellants submit that the Preliminary objection by the Respondents is on the issue of the alleged disobedience of Orders by Wakiaga J. and Mwongo, J. on depositing of lease money in a joint account and filing of a supplementary record of appeal.
12. The respondents/appellants submit that the applicants were at liberty to file an application for contempt or file an application for striking out of the supplementary record of appeal. Lastly, the respondents/appellants submit that their appeal raises substantive and triable issues deserving full hearing and determination.
13. The issue of filing the appeal out of time given by the court and failure to deposit proceeds of the estate deposited in a joint interest earning account are not pure points of law. They amount to contempt of court by failure obey court orders and the court has discretion to extend time for compliance with its orders, for sufficient reason as provided in Order 50 Rule 6 of the Civil Procedure Rules. Under Article 159 (2)(d) of *the Constitution*, Courts are enjoined to administer justice without undue regard to procedural technicalities.
14. As it would involve the exercise of a discretion, the preliminary objection is not properly taken. The Respondent ma, of course, move the Court to strike out the appeal in accordance with the Rules of the Court.

Order

15. Accordingly, for the reasons set out above, the Preliminary Objection is rejected.

16. Costs in the Cause.

Orders accordingly.

DATED AND DELIVERED THIS 23RD DAY OF OCTOBER 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Mwangi Maina fro the Appellant/ Respondent.

Ms. Wambui for the Respondent/Applicant.

