



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Geroge & another v Mwangi (Civil Appeal E138 of 2024)
[2025] KEHC 16151 (KLR) (7 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16151 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E138 OF 2024
BM MUSYOKI, J
NOVEMBER 7, 2025**

BETWEEN

VIATA KANZA GEROGGE & CHRISTOPHER NGUTA KASUVA APPELLANT

AND

JOSEPH KAMAU MWANGI RESPONDENT

(Being an appeal from ruling and orders of Honourable O.M. Wanyanga SRM in Thika Chief Magistrate's Court civil case number E647 of 2018 dated 16-11-2023)

RULING

1. As far as I can discern from the record of the court;
 - a. The ruling being appealed was delivered on 16th November 2023.
 - b. The memorandum of appeal is dated 19th October 2023 which is about eleven months after the ruling.
 - c. The tracking notes made on the inner side of the cover of the court file indicates that the memorandum of appeal was lodged on 25-06-024 which is the same date shown in the case tracking system.
 - d. The tracking notes however indicate that the proceedings of the lower court were requested on 30-10-2023 and received on 28-12-2023.
2. It is obvious that the above sequence of actions does not add up in terms of the timings. Ordinarily, the record of the trial court would not have been requested and received before the memorandum of appeal was lodged. It is therefore most likely that a memorandum of appeal was lodged sometime between 19-10-2023 when it was drawn and 30-10-2023 when the Court Administrator requested for the lower court record. More confusion was created in my mind by the fact that the appeal is referenced as a 2024 and not 2023 appeal. Whichever way, it appears to me that the appeal was lodged out of time



stipulated in the Section 79G of the Civil Procedure Act Chapter 21 of the Laws of Kenya and therefore a candidate for striking out.

While trying to seek answers to the above scenario, I came across papers for miscellanies application number E001 of 2023 interestingly filed in the system as a judicial review application. The application was among others seeking that the applicant who is the appellant herein be granted leave to appeal the ruling of the trial court which is the subject in this matter, out of time. The system shows that the application came for mention before Honourable Lady Justice F. Muchemi on 10-02-2025 and outcome of that date is indicated as ‘terminated/struck out/case closed.’

Having said the above and in order not to condemn the appellant without having been heard and noting that the issue of the appeal having been filed out of time has not been addressed in the appellant’s submissions, I make the following orders;

1. The Deputy Registrar of this court shall within fourteen (14) days of this ruling file a report;
 - a. clarifying to me the date the appeal was actually filed.
 - b. Giving the status and outcome of HCJRMISC number E001 of 2023.
2. The appellants shall within the same period file an affidavit sworn by their advocate handling the matter and supplementary submissions both addressing and explaining to me the scenario I have stated above.
3. This matter shall be mentioned on a date to be given after this ruling for purposes of confirming compliance and fixing another judgement date.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 7TH DAY OF NOVEMBER 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Judgment delivered in absence of the parties.

