



REPUBLIC OF KENYA



**Power Twins Limited v Finton Logistics Limited (Civil Appeal E083 of 2025)
[2025] KEHC 16224 (KLR) (Commercial and Tax) (6 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16224 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL APPEAL E083 OF 2025**

PM MULWA, J

NOVEMBER 6, 2025

BETWEEN

POWER TWINS LIMITED APPELLANT

AND

FINTON LOGISTICS LIMITED RESPONDENT

RULING

1. Before this Court for determination is the Respondent's Notice of Preliminary Objection dated 24th March 2025. The respondent objected to the appeal on the grounds that it was filed two months after the decision being appealed against was made, which is contrary to Section 79G of the *akn ke act 1924 3 Civil Procedure Act*.
2. It also argued that the memorandum of appeal was defective for being filed out of time without first seeking extension of time which was tantamount to moving the court to remedy an illegality. And that the appeal is incompetent and bad in law.
3. The court directed the parties to file written submissions. The Appellant's submissions are dated 28th March 2025 and those by the Respondent are dated 7th May 2025.
4. Having read and considered the submissions the key issue for determination is whether the preliminary objection is merited.
5. A Preliminary Objection, as defined in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696, is one that:

“...consists of a pure 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.”



6. The Respondent challenges the appeal herein on the ground that the memorandum of appeal was filed outside the 30 days allowed by the law and without having sought for extension of time.
7. Section 79G of the *Kenya Civil Procedure Act 1924* stipulates that every appeal from the subordinate court to the High Court shall be filed within a period of 30 days from the date of the decree or order appealed against, excluding from such period the time which the lower court may certify as having been necessary for the preparation and delivery to the appellant of a copy of the decree or order. Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal on time.
8. In *Salat v Independent Electoral and Boundaries Commission & 7 others* (Application 16 of 2014) [2014] KESC 12 (KLR) it was held that:

“...where the law provided for the time within which something ought to be done, if that time lapsed, one needed to first seek extension of that time before he could proceed to do that which the law required...The applicant, by filing an appeal out of time before seeking extension of time, and subsequently asking the court to extend time and recognize such ‘an appeal’, was tantamount to moving the court to remedy an illegality which the court could not do...”
9. The record before the court shows that, aggrieved by the decision in the Small Claims Court Case No. SCCCOMM rendered on 9th December 2024, the Appellant lodged an appealth March 2025. before this court by way of a memorandum of appeal dated 7
10. The memorandum of appeal was filed on 11th March 2025. The Appellant does not dispute that the memorandum of appeal was filed outside of the legally stipulated timeline, but contends that the 16 days delay was not inordinate.
11. But to the extent that the Appellant has not demonstrated that leave to file an appeal out of time was sought and obtained, I find that the appeal before the court is incompetent and is for striking out.
12. The Preliminary Objection, therefore, is merited. It is upheld, and the appeal is consequently struck out. Costs will be to the Respondent which I assess at Kshs. 20,000 =.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 6TH DAY OF NOVEMBER 2025.

P.M. MULWA

JUDGE

In the presence of:

Mr. Musano for Appellant

Mr. Muriithi for Respondent

Court Assistant : Carlos

