

THE REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL AND TAX DIVISION
HCCOMM. NO. E018 OF 2025

HON. JUSTICE ALEEM VISRAM
19TH NOVEMBER, 2025

BETWEEN

**ASHANTI PENSION INSURANCE
AGENCY LTD.....1ST
APPELLANT/RESPONDENT**

**JIPAY PAYMENT SOLUTIONS LIMITED.....
2ND APPELLANT/RESPONDENT**

AND

**ECOBANK KENYA LIMITED.....
.....RESPONDENT/APPLICANT**

RULING

1. Before me is a Preliminary Objection dated 23rd April, 2025, in which the Respondent contends that this Court lacks jurisdiction to entertain the appeal filed on 23rd January, 2025. The objection is founded on the ground that the appeal emanating from the Industrial Property Tribunal was filed outside the statutory period for lodging an appeal and without leave, thereby rendering the appeal incompetent.

2. The judgment of the Industrial Property Tribunal was delivered on 24th October, 2024. It is common ground that the Appeal was lodged on 23rd January, 2025. The sole question for determination is whether the appeal is time-barred, and consequently, whether this Court can assume jurisdiction?
3. Section 79G of the Civil Procedure Act prescribes the general rule governing timelines for filing appeals from subordinate courts. Jurisprudence of the High Court, the Court of Appeal, and the Supreme Court affirms that time limits for filing appeals are jurisdictional and that an appeal filed out of time without leave is a nullity. In *John Kamonjo Mwaura v Kenya Industrial Property Institute & Another; Commercial Bank of Africa & Another (Interested Parties) [2022] eKLR*, a decision arising from an appeal against the *same Tribunal*, the Court held at paragraphs 10–11 that where the statutory period lapses, the right of appeal is extinguished unless leave is sought under the proviso to section 79G. The Court emphasized that such failure goes to jurisdiction and is not a technical defect.
4. The Court of Appeal expressed the same position in *Kakuta Maimai Hamisi v Peris Pesi Tobiko & 2 Others [2013] eKLR*, stating that the right of appeal is a creature of statute and cannot be presumed. Where the statutory foundation is absent, the Court lacks jurisdiction.

5. The Supreme Court in *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others [2014] eKLR* was categorical that no appeal may be filed out of time without leave. Where an appeal is filed first and leave is sought later, the Court observed that the Court is being invited “to remedy an illegality”, which it cannot do. An appeal filed out of time without leave is a nullity and cannot be revived by a subsequent application.
6. The Appellants argue that the Industrial Property Tribunal (Procedure) Rules, 2023 prescribe a 90-day period for filing an appeal, and that these Rules, being *lex specialis*, displace the general regime in Section 79G. I have considered Rule 6(1) of the 2023 Rules. What emerges is that the Rule speaks to appeals to the Tribunal, not appeals *from* the Tribunal to the High Court. The Industrial Property Act contains no express statutory timelines governing appeals *to this Court*. In the absence of such express provision, the Tribunal stands as a subordinate court within Article 169(1)(d) of the Constitution, and Section 79G applies by virtue of paragraph 7(1) of the Sixth Schedule.
7. This position is consistent with the reasoning in *John Kamonjo Mwaura (supra)*, where the High Court expressly applied Section 79G to an appeal from the Industrial Property Tribunal. The Appellants have not cited any authority to the contrary. The decision in *Speaker of the National Assembly v Karume [1992] eKLR* does not assist them; if anything, it reinforces adherence to

procedures prescribed by statute. The difficulty for the Appellants is that no statutory provision furnishes a 90-day period for appeals to this Court.

8. The appeal herein was lodged almost two months outside the 30-day statutory period. No application for leave to extend time was ever made. The effect is that the right of appeal stood extinguished once the 30 days lapsed. Meoli J. in *John Kamonjo Mwaura (supra)*, stated that the Court “*cannot assume appellate jurisdiction*” where the appeal is filed out of time without leave. The decision of the High Court in *Josephine Wambui Mwangi v Michael Mukundi Ngugi [2021] KEHC 2002 (KLR)* underscores the same point: an appeal filed out of time in blatant disregard of Section 79G cannot be salvaged without an application to regularize it.
9. Jurisdiction flows from the Constitution and statute. An appeal filed outside statutory time without leave is a nullity. The Court cannot cure such defect, nor can parties by consent confer jurisdiction where none exists. The Preliminary Objection is with merit. It raises a pure point of law, is capable of disposing of the appeal, and requires no ascertainment of contested facts.
10. I therefore find that the appeal dated 23rd January, 2025, is time-barred and that this Court lacks jurisdiction to entertain it.

Conclusion and Disposition

11. The Preliminary Objection dated 23rd April, 2025, is upheld.

12. The Appeal dated 23rd January, 2025, is hereby struck out for being filed out of time and without leave of the Court.

13. Costs shall follow the event and are awarded to the Respondent.

Dated and delivered virtually via Microsoft Teams this 19th day of November, 2025

**ALEEM VISRAM, FCI Arb
JUDGE**

**In the presence of;
Court Assistant: Lispa**

.....for 1st Appellant/Respondent
.....for 2nd Appellant/Respondent
.....for Respondent/Applicant