

**IN THE COURT OF
APPEAL AT
NAIROBI**

**(CORAM: MUSINGA (P), (IN
CHAMBERS) CIVIL APPLICATION NO. NAI
E669 OF 2024**

BETWEEN

MUSEUM VIEW OFFICE SUITES LIMITED.....APPLICANT

AND

MURI MWANIKI & WAMITI ADVOATES.....RESPONDENT

*(Being an application for leave to appeal out of time and stay of execution of the ruling of the Environment and Land Court of Kenya at Nairobi (**Ann Nyakuri, J.**) dated 25th September 2024*

in

ELC Misc. Application No. 28 of 2018)

****** RULING**

1. The applicant's notice of motion dated 28th December 2024 seeks extension of time to lodge and serve a record of appeal against the ruling of the Environment and Land Court (ELC), delivered on 25th September 2024 in **ELC Misc. Application No. 28 of 2018.**
2. The applicant's affidavit in support of the application was sworn by John K. Wambugu, one of its directors. The applicant states *inter alia*, that upon hearing of cross-references, one by the applicant and another by the

respondent, on 25th September 2024, the trial court delivered a ruling in which it dismissed the

applicant's reference and allowed the respondent's reference; that the applicant being aggrieved by the ruling intends to appeal against it; that the ruling was delivered in the absence of the applicant due to an inadvertent mistake of its advocate, who mis-diarised the date of the ruling as 25th November 2024 instead of 25th September 2024; that after delivery of the ruling the respondent's advocate did not serve the applicant's advocate with a copy thereof, and therefore the applicant's advocate was unable to file a notice of appeal within the statutory timelines; and that it was not until 13th November 2024 when the respondent's advocate served the certificate of taxation upon the applicant's advocate that they became aware of the impugned ruling.

3. The applicant further states that he should not be punished because of his advocate's mistake; that its intended appeal is not only arguable but has overwhelming chances of success; and that unless this application is granted, the respondent will proceed to commence execution proceedings for recovery of **Kshs. 4,386,052/-** and the applicant will be unable to exercise its right of appeal.
4. The application is opposed. The respondent filed a replying affidavit that was sworn by **Martin G. Mwaniki**, an

advocate

practicing in the respondent's firm of advocates. The respondent states, *inter alia*, that this Court lacks jurisdiction to hear the application because it is incompetent for reasons that: (a) *there is no automatic right of appeal to this Court against a decision of a judge upon an objection by way of a reference from a decision of a taxing officer because an application for leave ought to be sought in the High Court as stipulated in paragraph 11(3) of the Advocates (Remuneration) Order 2009 and Rule 41(1) of the Court of Appeal Rules, 2022;*

(b) the applicant has not applied for leave at all either by the High Court or this Court to appeal against the ruling of 25th September 2024, which leave, in any event, must be obtained within 14 days of the ruling; (c) the applicant did not seek extension of time within which to apply for leave to appeal against the said ruling.

5. The respondent further states that subsequent to the delivery of the ruling on 25th September 2024, the applicant did not serve the respondent with the notice of appeal or a letter bespeaking the proceedings of this Court and, therefore, pursuant to rule 84 of this Court's Rules, the applicant cannot seek extension of time.

6. The respondent contends that the reasons advanced by the applicant for delay in filing a notice of appeal are not sufficient, and urges this Court to dismiss the application.
7. The parties filed submissions that I have considered, and I need not rehash the contents thereof as they largely reiterate and expound on the issues raised in their respective affidavits.
8. **Paragraph 11(3) of The Advocates (Remuneration) Order 2009** states as follows:

“Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.”

9. Rule 41(1) of this Court’s Rules states as follows:

“In a civil matter—

(a) where an appeal lies with the leave of the superior court, application for such leave may be made—

(i) informally at the time when the decision against which it is desired to appeal is given; or

(ii) by motion or chamber summons according to the practice of the superior court, within fourteen days of such decision;

(b) where an appeal lies with the leave of the Court, application for such leave shall be made—

(i) in the manner laid down in rules 44 and

45 within fourteen days after the decision against which it is desired to appeal; or

(ii) where application for leave to appeal has been made to the superior court and refused, within fourteen days after such refusal.”

10. There is no indication that the applicant made any effort to seek leave to appeal from the trial court judge. It is therefore evident that the applicant is in clear violation of the provisions of paragraph 11(3) of the Advocates (Remuneration) Order 2009, and therefore this Court has no jurisdiction to consider this application.
11. This Court has previously held that a party who does not seek leave to appeal against a decision of a judge on a reference in taxation proceedings does not have standing before this Court. See **Kenya County Government Workers Union v Mbuvi t/a Katunga Mbuvi & Co Advocates (Civil Application E059 of 2023)** [2023] KECA 525 (KLR) (12 May 2023) (Ruling).
12. Being deprived of jurisdiction for reasons as stated, I must down my tools at this stage. Consequently, I hereby strike out this application with costs to the respondent.

Dated and delivered at Nairobi this 21st day of November 2025.

D. K. MUSINGA, (PRESIDENT)

.....
JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed
DEPUTY
REGISTRAR.