



Shitoshe & 2 others v Kakai (Deceased) & 3 others (Environment and Land Appeal E042 of 2023) [2025] KEELC 8221 (KLR) (19 November 2025) (Ruling)

Neutral citation: [2025] KEELC 8221 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND APPEAL E042 OF 2023**

A NYUKURI, J

NOVEMBER 19, 2025

BETWEEN

**RECHO MAKOKHA SHITOSHE 1ST APPELLANT
LABAN MULONGO SHITOSHE 2ND APPELLANT
CALEB SHITOSHE 3RD APPELLANT**

AND

**KUTO KAKAI (DECEASED) 1ST RESPONDENT
KUTO PANYAKO 2ND RESPONDENT
KUTO JACOB WAFULA 3RD RESPONDENT
STEPHEN EKESA 4TH RESPONDENT**

RULING

1. When this appeal came up on 25th February 2025 for directions, the respondents' counsel pointed out that this appeal was filed out of time without leave of court as the decision appealed against had been delivered on 23rd October 2023 while the appeal was filed on 15th December 2023. Subsequently, the court directed parties to file and exchange written submissions on the question as to whether the appeal herein was competent and whether it was filed within time.
2. Therefore this ruling is in respect to the question as to whether the appeal filed herein is competent.
3. The appellants filed supplementary affidavit dated 3rd June 2025. The 4th Respondent's counsel filed submissions dated 10th March 2025.
4. The appellants argued that when they filed the appeal they did not have other documents available, which are proceedings and medical report which they annexed to their affidavit. That they sued Khayumbi advocate for conflict of interest but he failed to attend the meeting at Kisumu. That the 4th



respondent has no locus standi to participate in this matter. That the 4th respondent and his advocate know why documents were missing on the court file.

5. Counsel for the 4th respondent submitted that the appeal offends section 75 (a) of the *Kenya Civil Procedure Act 1924*. Counsel referred to the case of *First American Bank of Kenya Ltd v Gulab P. Shali & 2 Others* [2002] EA 65 and submitted that if there is a delay in filing an appeal the delay should be explained and the court should consider whether or not the respondents will be adequately compensated in costs.

Analysis and determination

6. The court has carefully considered the appeal as well as the written submissions filed and the only issue for determination is whether there is a competent appeal before this court.
7. Section 79G of the *Kenya Civil Procedure Act 1924* provide for time within which an appeal ought to be filed as follows;

“79G. Time for filing appeals from subordinate courts

Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite 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 in time.”

8. Therefore, an appeal ought to be filed within 30 days of the decision appealed against. However, if the appellant demonstrates to court that there is a good cause for delay the appeal may be admitted out of time. In the matter before me, this appeal was filed on 15th December 2023 against a decision made on 23rd October 2023. It is clear that it was filed after the 30-day period allowed for filing appeals. There is no application before me for extension of time, and the appellants have not availed a court order allowing them to appeal out of time. Therefore, this appeal having been filed out of time without leave of court is incurably incompetent. In the premises, I hereby strike out the appeal herein with costs to the 4th respondent.
9. It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 19TH DAY OF NOVEMBER, 2025

A. NYUKURI

JUDGE

In the presence of

The 2nd and 3rd appellants present in person

No appearance for 1st appellant

Mr. Khayumbi for 4th respondent

No appearance for 1st, 2nd and 3rd respondents



Court Assistant: Delphine

