



REPUBLIC OF KENYA



KENYA LAW
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**Opere v Nyakwama & another (Environment and Land Appeal
E023 of 2024) [2025] KEELC 8554 (KLR) (8 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 8554 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENT AND LAND APPEAL E023 OF 2024
FO NYAGAKA, J
DECEMBER 8, 2025**

BETWEEN

REGGY OPIYO OPERE APPELLANT

AND

LAWRENCE ONDUSO NYAKWAMA 1ST RESPONDENT

**NIFRIDA ADEYA IMINZA (SUED ON BEHALF OF THE ESTATE OF CALEB
ADEYA) 2ND RESPONDENT**

(On whether the appellant's appeal should be dismissed for non-compliance with order 42 rules 2 and 11 of the Civil procedure rules, 2010)

RULING

Introduction

1. The appellant herein, being dissatisfied with the judgment of the lower court in Migori CMCELC no. 60 of 2018 delivered on 17th September 2024, instituted the instant appeal. However, the Appellant did not file a certified copy of the decree appealed against as provided under Order 42 Rule 2 of the Civil Procedure Rules. On 5th Feb 2025, this court issued Notice to Show Cause why the appeal should not be dismissed for failing to comply with order 42 rule of the Civil Procedure Rules.

Response to the Notice to Show Cause

2. The appellant filed an Affidavit sworn by himself and dated 25th February 2025, deponing that there was sufficient cause shown why the appeal should not be dismissed. He deponed that his advocate on record requested for typed copies of the proceedings and judgment delivered by the lower court on 17th September 2025. He annexed a copy of a letter requesting for the said proceedings and judgment marked ROO 1.



3. The Appellant further deponed that he had not been supplied with the said copies of typed proceedings and judgment of the lower court as the time of making the instant response, despite follow-ups at the Registry. He stated that he was keen on following up on the appeal and prayed that the court indulges him for the non-compliance.
4. The Respondent on the other hand filed a Replying Affidavit dated 28th March 2025 in response to the Notice to Show Cause dated 5th February 2025 as well as the appellant's replying affidavit dated 25th March, 2025. He deponed that he was never served with a Memorandum of Appeal. He equally deponed that there was no letter evidencing the appellant's request for submissions.
5. In addition to the foregoing, the respondent stated that the appellant is notorious for filing frivolous appeals and that he fails to follow up the prosecution of the said appeals. He argued that the applicant is not deserving of this court's courtesy and prayed that the appeal be dismissed and costs of the same be awarded to him.

Issues and determination

6. The issue for determination herein is whether the appellant's appeal should be dismissed for non-compliance with the provisions of the law on the procedure of filing and prosecuting appeals.
7. Order 42 Rule 2 and 11 provide respectively as follows:
 2. "Where no certified copy of the decree or order appealed against is filed with the memorandum of appeal, the appellant shall file such certified copy as soon as possible and in any event within such time as the court may order, and the court need not consider whether to reject the appeal summarily under section 79B of the Act until such certified copy is filed."
 11. "A judge of the High Court shall, within thirty days of the filing of an appeal under section 79B of the Act, peruse the appeal and give directions in accordance with the provisions of section 79B of the Act."
8. The provisions do not expressly state what should happen when the appellant does not take any of these steps, within a certain period or at all. But it is not in dispute that where timelines are fixed by the law or the court and are not complied with, the court may sanction the party at fault. This may include the dismissal of the matter for non-compliance. That explains why the notice to show cause was issued in this matter.
9. I have analyzed the responses filed by both parties as well as the annexures thereto. I note that, although the appellant did not extract the decree and file it with the appeal, he had not been given timelines within which to do so. I have also considered the applicant's replying affidavit and the letter thereto requesting for copies of the typed proceedings. Notably the proceedings had not been received as at the time of issuing the Notice to Show Cause on 26th March, 2025. Indeed, the court record shows that the proceedings were typed and certified as a true copy of the original afterwards on 26th April 2025. But it is not clear why the appellant was never given the same or has never been able to pick them up for action on the preparation of the Record of Appeal herein.
10. Given the aforesaid, I find no fault on the part of appellant and allow the appeal to proceed for determination subject to the appellant filing and serving written submissions on the and the Supplementary of Record of appeal within only ten (10) days from the date of this ruling, in default the appeal shall stand struck out automatically, with costs to the Respondents.



11. The Appeal shall be mentioned on 15th January 2026 to confirm the filing and service of the Supplementary Record of Appeal and submissions in time, and giving further directions if that shall have been complied with. There shall be no order as to costs on this issue of the Notice to Show Cause.
12. Orders accordingly.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY VIA THE TEAMS PLATFORM
THIS 8TH DAY OF DECEMBER, 2025.**

**HON. DR. IUR NYAGAKA,
JUDGE**

In the presence of,

Court Assistant: Lola

E. Awino advocate for the appellant

Abisai for advocate for the 1st Respondent (absent)

Mudeyi Advocate for the 2nd Respondent (absent)

