



REPUBLIC OF KENYA



**Platinum Outsourcing & Logistics (EA) Limited v Mbuvi (Civil Appeal  
E297 of 2024) [2025] KEHC 19145 (KLR) (Civ) (18 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 19145 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL  
CIVIL APPEAL E297 OF 2024**

**RC RUTTO, J  
DECEMBER 18, 2025**

**BETWEEN**

**PLATINUM OUTSOURCING & LOGISTICS (EA) LIMITED ..... APPELLANT**

**AND**

**JOHN MUTUKU MBUVI ..... RESPONDENT**

**RULING**

1. In his Notice of Motion dated 29<sup>th</sup> July 2025, the respondent has invoked the provisions of section 79G of the *Civil Procedure Act* and order 2 rule 15 (d) of the Civil Procedure Rules seeking the following substantive orders:
  1. That the appeal filed by the appellant on 13<sup>th</sup> November 2014 be struck out for being filed out of time and without leave of the court;
  2. That the costs of this application be paid by the appellant to the respondent.
2. The application is supported by the grounds set out on its face, together with the supporting affidavit sworn on 29<sup>th</sup> July 2025 and a further affidavit sworn on 28<sup>th</sup> October 2025 by Dominic M. Mulyungi, Counsel for the respondent.
3. According to the respondent, the appeal arises from the judgment of the trial court delivered on 4<sup>th</sup> September 2024 in Mavoko CMCC No. 1372 of 2018. Aggrieved, by that decision, the appellant promptly filed an application for stay of execution of the judgment. Subsequently, the appellant lodged a memorandum of appeal dated 3<sup>rd</sup> October 2024 but only filed it on 13<sup>th</sup> November 2024. The respondent contends that the appellant never sought leave to file the appeal out of time.
4. The respondent further, averred that he has never been served with the appeal to date. He urged the court to strike out the appeal as incompetent and bad in law, having been filed outside the statutory



timelines prescribed under section 79G of the *Civil Procedure Act*. He computed that the appeal was filed 71 days after the impugned judgment, well beyond the statutory period of 30 days.

5. The application is opposed. The appellant filed a replying affidavit sworn on 23<sup>rd</sup> October 2025 by Rosemary C. Kosgei, Counsel for the appellant. The appellant admitted that the memorandum of appeal was indeed filed on 13<sup>th</sup> November 2024, outside the prescribed timelines as set out under section 79G of the *Civil Procedure Act*. However, it explained that the delay was not deliberate but occasioned by circumstances beyond its control.
6. Specifically, the appellant stated that after the delivery of the judgment, it applied for typed proceedings and a certified copy of the judgment. However, due to administrative challenges, at the lower court registry, the documents were not furnished promptly. That it was only upon obtaining the judgment that the appellant's counsel was able to advise the appellant on the available options.
7. The appellant therefore urged the court to find that it did not act in bad faith. It submitted that the court retains discretion under Order 50 of the Civil Procedure Rules to extend time and admit an appeal filed out of time where sufficient cause is shown.
8. The appellant further argued that no prejudice would be suffered by the respondent if the appeal were allowed to proceed. It emphasized that the appeal raises substantial and arguable issues deserving consideration on the merits.
9. Striking out the appeal, it contended, would be contrary to the constitutional guarantee of access to justice under Article 48 of *the Constitution*, as well as the overriding objectives enshrined in sections 1A and 1B of the *Civil Procedure Act*. The appellant characterized the orders sought as drastic, likely to drive it away from the seat of justice. Finally, it expressed willingness to abide by any conditions precedent that the court may impose.
10. The application was directed to be disposed of by way of written submissions. However, as at the time of writing this ruling, none of the parties had filed their submissions. Nonetheless, I have considered the application and the affidavits, annexures and the law applicable law.
11. The respondent seeks to strike out the memorandum of appeal dated 3<sup>rd</sup> October 2024 for being filed on 13<sup>th</sup> November 2024, on ground that it was filed out of time. This fact is not disputed by the appellant, who instead urged this court to exercise discretion in sustaining the appeal rather than striking it out.
12. The governing provisions for appealing against a decision of the subordinate court are to be found in section 79G of the *Civil Procedure Act* which provide as follows:

“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.”
13. From this provision, it is clear that the statutory requirement to file an appeal within 30 days. However, for good and sufficient cause, an appeal may be admitted out of time provided the appellant demonstrates good and sufficient cause. Such discretion is only exercised upon a formal application for extension of time.



14. In the present case, the appellant did not move the court for extension of time. Instead, it filed the appeal out of time without leave. The respondent has correctly pointed out that this application is not one for extension of time, but rather for striking out. Consequently, the proviso to section 79G does not apply in this context.
15. Both parties are in agreement that the appeal was filed out of time. The respondent has therefore invoked Order 2 Rule 15(1)(d) of the Civil Procedure Rules, which empowers the court to strike out pleadings that amount to an abuse of the process of the court.
16. Further, Order 42 of the Civil Procedure Rules governs appeals to the High Court, requiring that every appeal be instituted by way of a memorandum of appeal. It was therefore irregular for the appellant to file a Notice of Appeal under Rule 75 of the Court of Appeal Rules, which applies only to appeals to the Court of Appeal.
17. In any event, the memorandum of appeal having been filed well beyond the statutory period of 30 days, without leave of court, is incompetent. I am guided by the Supreme Court of Kenya in the case of Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR . (Nick Salat Case) in addressing the issue of an appeal being filed out of time and on extension of time, held as follows:

“No appeal can be filed out of time without leave of the Court. Such a filing renders the ‘document’ so filed a nullity and of no legal consequence. Consequently, this Court will not accept a document filed out of time without leave of the Court. It is unfortunate that Petition No. 10 of 2014 has been accorded a reference number in this Court’s Registry. This is irregular as that document is unknown in law and the same should be struck out.

18. Consequently, being guided by the above pronouncement of the Supreme Court, and for which I am bound, I do find that the appeal herein having been filed out of time and without leave of court is due for striking out. The upshot of the above is that the application dated 29<sup>th</sup> July 2025 is allowed to the extent that the appeal herein is struck out with costs to the Respondents for being filed out of time without leave of court. The costs are assessed at Kshs.35,000/-.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 18<sup>TH</sup> DAY OF DECEMBER 2025.**

**RHODA RUTTO**

**JUDGE**

In the presence of;

.....Appellant

.....Respondent

Selina Court Assistant

