



Mathu, Chairman & 2 others (All Jointly Suing as and on Behalf of Kyuna Neighbours Association) v National Environment Management Authority & 3 others; Services (Interested Party) (Environment and Land Appeal E076 of 2023) [2026] KEELC 173 (KLR) (27 January 2026) (Ruling)

Neutral citation: [2026] KEELC 173 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E076 OF 2023**

**JG KEMEI, J
JANUARY 27, 2026**

BETWEEN

**KIMANI MATHU, CHAIRMAN 1ST APPELLANT
ATUL SHAH, VICE CHAIRPERSON 2ND APPELLANT
CHRIS NDEGWA, SECRETARY 3RD APPELLANT
ALL JOINTLY SUING AS AND ON BEHALF OF KYUNA NEIGHBOURS
ASSOCIATION**

AND

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 1ST
RESPONDENT
SHANZU RETREAT LIMITED 2ND RESPONDENT
SHANAWAZ MOHAMED ALI 3RD RESPONDENT
WISSANJI MURJI 4TH RESPONDENT**

AND

**DDIRECTOR GENERAL NAIROBI METROPOLITAN
SERVICES INTERESTED PARTY**

RULING

1. Before me is an application dated the 27/5/25 filed by the 2nd and 3rd Respondents [Applicants] seeking the following orders;



- a. That the appeal, instituted vide the memorandum of appeal dated 23/6/23 and filed on 30/6/23, was lodged outside the mandatory thirty (30)-day statutory period prescribed under Section 130 (1) of the Environment Management and Coordination Act [EMCA], 1999, and is therefore time-barred and incompetent.
 - b. That the entire appeal and the record of appeal dated 8/10/24 be struck out in limine as incurably defective, having been filed outside the statutory period without leave of the court.
 - c. Costs of the appeal be provided for.
2. The application is premised on the grounds annexed thereto and the supporting affidavit sworn on 27/5/25 by Tom Bowman, who deponed that he is a Director of the 2nd Respondent and duly authorised to swear the affidavit on its behalf. By way of background, he stated that the judgment of the National Environment Tribunal [NET] was delivered on 13/4/23, dismissing the appellant's appeal in its entirety. The appeal challenged the issuance of the Environmental Impact Assessment Licence No NEMA/EIA/PSL/13837 to the 3rd Respondent for the proposed residential development on LR Nos 7158/268 and 7158/269 [the suit properties]. Subsequently, the appellant lodged the present appeal vide the Memorandum of Appeal dated 23/6/23, which was filed on 30/6/23, and the Record of Appeal was filed on 8/10/2024.
 3. That Section 130(1) of EMCA requires any person aggrieved by a decision of the NET to appeal to the Environment and Land Court [ELC] within 30 days of the decision. However, the appeal was filed 78 days after the impugned judgment was delivered, outside the 30-day period mandated by EMCA. Despite filing the appeal out of time, the appellant has neither sought leave to file the appeal out of time nor provided any explanation for the inordinate delay.
 4. It was further averred that the provisions of Section 130(1) of EMCA are couched in mandatory terms, and this court is not vested with jurisdiction or discretion to enlarge the time prescribed for filing such an appeal. In any event, no application for enlargement of time has been placed before the court; hence, the memorandum of appeal dated 23/6/23 and the record of appeal dated 8/10/24 are incurably defective, irregular and incompetent for having been filed outside the statutory period without leave and without explanation.
 5. That the pendency of the incompetent appeal undermines the rule of law, prejudices the 2nd and 3rd Respondents, who are entitled to finality, and constitutes an abuse of the court. The court was urged to strike out the appeal.
 6. In opposition to the instant application, Kimani Mathu, the 1st appellant, [Appellants/Respondents] in a sworn replying affidavit dated 25/7/25, avers that he is the Chairman of Kyuna Neighbours Association. He states that the claims brought by the appellants on behalf of the Association, its members, and neighbours are premised on public interest. That the crux of the dispute is the 1st Respondent's irregular and unlawful approval of the 2nd and 3rd Respondents' proposed development of new townhouses on the suit lands, in violation of Sections 58 and 64 of EMCA, read together with Para 3(1) & (2) of Legal Notices No.s 31 and 32 of 30/4/2019, by failing to require the 3rd Respondent to undertake an Environmental and Social Impact Assessment (ESIA) study and by failing to require compliance with the conditions it imposed on the irregularly issued licence. In addition, it was averred that the proceedings have been commenced to assert and protect the right to a clean and healthy environment.
 7. It was contended that the objection to the court's jurisdiction, as set out in the instant Notice of Motion, is time-barred because Order 42, Rule 13(1) and (2) of the Civil Procedure Rules require any objection to be raised within 21 days of the service of the memorandum of appeal. The appeal was



lodged and served on 26/6/23, and the instant application was filed on 27/5/25, outside the 21 days contemplated by Order 42, Rule 13(1) and (2). The record of appeal was served on 14/10/24, and the application ought to have been filed on or before 5/11/24. The objection has been brought with inordinate delay from the date the appeal was lodged and served.

8. For the purposes of computing time under Section 130(1) of EMCA, read together with Rule 37(6) of the NET Procedure Rules, the 30-day period runs from the date the document is sent to the aggrieved party, not from the date of delivery of the decision. In that regard, the deponent states that their counsel received the communication from the Tribunal on 26/5/23 at 8.14 am, forwarding the tribunal's judgment. The system printout for the period 12/4/23 to 14/4/23 shows that no email was received from the tribunal forwarding the judgment. Aggrieved by the said judgment, the appellants filed their memorandum of appeal on 26/6/23. Upon lodgement of pleadings on the e-filing portal, the documents are deemed to have been lawfully filed on that date.
9. Further, the appellants are of the view that the 2nd and 3rd Respondents have not demonstrated the prejudice they would suffer if the appeal were filed late. That hindering the appellants' right of audience in respect of the instant appeal would be contrary to the spirit, letter and intent of Art 159 (2) (d) of *the Constitution* and would deprive him of equal benefit and protection of the law.
10. The 1st Respondent and the Interested Parties did not oppose the application.

The written submissions

11. Parties filed their respective written submissions, which I have read and considered.

Analysis and determination

12. Flowing from the application, the replies and the written submissions the issues that fall for determination are;
 - a. Whether the application is time-barred by virtue of the provisions of Order 42 Rule 13 (1) and (2) of the Civil Procedure Rules
 - b. Whether the instant appeal was filed within time.
 - c. Costs of the application

Whether the application is time-barred by virtue of the provisions of Order 42 Rule 13 (1) and (2) of the Civil Procedure Rules

13. It is the Appellants' case that the application before the court is merely an objection to this court's jurisdiction by the 2nd and 3rd applicants, and that it ought to have been brought within 21 days before directions are given under Order 42, Rules 13(1) and (2). That, as the memorandum of appeal was filed and served on the applicants on 26/6/25, any challenge to the court's jurisdiction ought to have been filed on or before 5/11/24. That, as the present application was made on 27/5/25, more than 19 months after service of the memorandum of appeal, it is time-barred and incurably defective and ought to be dismissed on this ground.
14. The applicants have argued that the provisions of Order 42, Rule 13 of the Civil Procedure Rules govern pre-hearing directions and do not in any way limit a party's right to raise a preliminary objection on the question of jurisdiction, as jurisdiction is a point of law and can be raised at any stage of the proceedings.



15. The provisions of Order 42, rule 13 bespeaks to directions before hearing of an appeal. It states as follows;

“ 13.

- (1) On notice to the parties delivered not less than twenty-one days after the date of service of the memorandum of appeal the appellant shall cause the appeal to be listed for the giving of directions by a judge in chambers.
- (2) Any objection to the jurisdiction of the appellate court shall be raised before the judge before he gives directions under this rule”.

16. I have perused the record, and it is clear that the memorandum of appeal and the record of appeal were served on 26/6/2023 and 14/10/24, respectively. The record also attests that directions on the hearing of the appeal have not been given in the instant appeal. The court has been dealing with the application, subject to this ruling, and despite the lapse of 21 days since the service of the memorandum of appeal, the appellant is yet to fix the appeal for directions. The court, therefore, having not given any directions on the appeal, I find that the application before the court is not time-barred nor can it be said to be fatal. The objection, therefore, is unmerited.

Whether the instant appeal was filed within time

17. It is the Applicant's case that the appeal was filed out of time. The appellants insist that the application was filed within the statutory period and urge its dismissal with costs.

18. It is trite that an appeal is a creature of law. I will discuss the provisions that govern the time frame within which an aggrieved party ought to move this court on appeal.

19. Section 16 A of the Environment and Land Court provides that all appeals from subordinate courts and local tribunals shall be filed within a period of thirty days from the date of the decree or order appealed against in matters in respect of disputes falling within the jurisdiction set out in Section 13(2) of the *Environment and Land Court Act* (Cap. 8D), provided that in computing time within which the appeal is to be instituted, there shall be excluded such time that the subordinate court or tribunal may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order.

20. It also provides that an appeal may be admitted out of time if the appellant satisfies the court that he had a good and sufficient cause for not filing the appeal in time.

21. Further, section 79C of the *Civil Procedure Act* provides that an appeal from the subordinate court shall lie to this court.

22. Section 130 (1) of EMCA provides that any party aggrieved by the decision of the Tribunal may, within 30 days of such decision or order, appeal against such decision. The said Act also provides that appeals from the NET shall lie to this court.

23. Regulation 37(6) of the Procedure and Rules of National Environmental Tribunal [NET] provides that except where a decision is announced at the end of the hearing, it shall be treated as having been made on the date the document recording it is sent to the appellant.

24. It is the appellants' case that the judgment of the tribunal was only transmitted to their counsel on 26/5/23, and that they lodged their appeal on 26/6/23 within the statutory period provided by law.



25. The question before the court is when does time run? Is it from the date of delivery of the judgment or the date of receipt of the judgment by the appellant?
26. I have perused the tribunal file, and it is unfortunate that the proceedings do not show the date the tribunal issued the judgment. However, the tribunal's judgment on record was dated and delivered on 13/4/23.
27. According to the applicants, upon delivery of the said judgement, the tribunal transmitted it via email to the parties on the same date at 14. 16 hours. The appellants have refuted receipt of the said email and have urged the court that the 30 days for filing an appeal ought to run from 26/5/23 and not 13/4/23.
28. I have reviewed the email from the tribunal, which indicates that the judgment was sent to the parties on 13/4/23 at 14.16 hrs. The tribunal forwarded the judgment and informed the parties that hard copies were available for collection. The applicants' counsel acknowledged receipt of the judgment via the same email. The second email from the tribunal on 26/5/23 refers to the appellants' letter dated 25/5/23, in which they requested the tribunal's judgment. The tribunal, while forwarding the judgement to the appellants, referred to its earlier email of 13/4/23, which had forwarded the judgement to all the parties, including the appellants' counsel.
29. The burden of proving non-receipt of the judgment lies with the appellants. The appellants have produced a computer printout for 13/4/2023, detailing the emails received by their counsel through the email account on record from 3.14 pm to 5.57 pm. The subject email from the tribunal was sent at 14.16 (2..16) hours. In the absence of any evidence showing that all emails for the day, or at least those received around 14.16 hours, were received, the appellants have failed to discharge the burden of proof. Furthermore, the appellants have not produced any evidence from the tribunal email system to show delivery failure, a bounce-back report, or an erroneous email.
30. In the absence of any evidence to show that the appellants did not receive the email of 13/4/23 forwarding the judgment, the court is of the view that the judgment was duly forwarded and received by the appellants on 13/4/23.
31. In conclusion, the court finds that the judgment was delivered on 13/4/23 and forwarded to the parties, including the appellants, on 13/4/23 at 14.16 hours. Any appeal, therefore, ought to have been filed within 30 days, being not later than 13/5/23.
32. The appeal, lodged on 16/5/23, was filed three days after the prescribed deadline. The question is whether allowing the appeal to be heard, despite its three-day late filing, would prejudice the applicants in any way. I do not think so. Notably, the applicants have not furnished any evidence of prejudice; consequently, I am inclined to find that the three-day delay is not inordinate and to sustain the appeal so that the parties may have their day in court.
33. I therefore find that this is a case in which the court, guided by its discretionary powers and in the interests of justice, should allow the appeal to proceed to hearing on merits.
34. Consequently, the application is disallowed, and I order that costs shall be in the cause.
35. Orders accordingly

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 27TH DAY OF JANUARY 2026 VIA MICROSOFT TEAMS.

J G KEMEI
JUDGE



Delivered Online in the presence of:

Ms Kioko HB for Mr Lusi for the Appellants/Respondents

N/A for the 1st Respondent

Ms Mariam Sitna for the 2nd and 3rd Respondents.

CA – Ms Yvette Njoroge

