



**Wesonga v Musalimwa (Civil Appeal E048 of 2025)
[2026] KEHC 736 (KLR) (30 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 736 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL E048 OF 2025
S MBUNGI, J
JANUARY 30, 2026**

BETWEEN

JOB MUKOMA WESONGA APPELLANT

AND

LEVI MWOGAH MUSALIMWA RESPONDENT

(On the Preliminary Objection dated 18/7/2025 and the Notice of Motion dated 26/6/2025)

RULING

Introduction

1. This ruling concerns the Notice of Motion dated 26th June 2025, wherein the Applicant seeks review and setting aside of the Court's earlier order striking out the appeal at the admission stage for being filed out of time.
2. The Applicant contends that the Court committed an error apparent on the face of the record in computing statutory timelines and asserts that the appeal filed on 14th April 2025 was within time.
3. The Respondent opposes the Motion through a Replying Affidavit dated 3rd October 2025 and a Preliminary Objection dated 18th July 2025, arguing that the appeal was properly struck out, that the Court lacks jurisdiction to review its own order, and that the Motion is incompetent.
4. The Court has considered the pleadings, the affidavits, the Preliminary Objection, and the applicable law.

Issues for Determination

5. The Court identifies the following issues for determination:
 - a. Whether the Preliminary Objection is merited;



- b. Whether the Court has jurisdiction to review its own order;
- c. Whether there exists an error apparent on the face of the record;
- d. Whether the appeal filed on 14th April 2025 was within statutory time;
- e. What orders should issue.

Preliminary Objection

6. A Preliminary Objection must raise a pure point of law capable of disposing of the matter without requiring evidence, as established in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696.
7. This position was reaffirmed in *IEBC v Jane Cheperenger & 2 Others* [2022] eKLR, where the Court emphasized that jurisdictional objections constitute proper preliminary points.
8. The Preliminary Objection herein raises questions on jurisdiction, statutory timelines, and competence, and is therefore properly before the Court.

Jurisdiction to Review

9. Jurisdiction is fundamental, and a court must down its tools where it lacks it, as held in *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] KLR 1.
10. However, Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules expressly empower a court to review its own decree or order where there is discovery of new evidence, an error apparent on the face of the record, or sufficient cause.
11. In *National Bank of Kenya Ltd v Ndungu Njau* [1997] eKLR, the Court held that review jurisdiction exists where an error is clear, self-evident, and does not require elaborate argument.
12. More recently, in *Ngetich v Koech (ELC Appeal No. 1 of 2019)* [2024] KEELC 5218, it was held that erroneous computation of statutory timelines constitutes an error apparent on the face of the record warranting review.
13. This Court therefore finds that it has jurisdiction to review its prior admission-stage order where error is alleged.

Failure to Attach the Ruling

14. The Respondent argues that the Motion is incompetent for failure to annex the ruling sought to be reviewed.
15. Article 159(2)(d) of *the Constitution* mandates courts to administer justice without undue regard to procedural technicalities.
16. In *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others* [2014] eKLR, the Supreme Court held that procedural lapses should not defeat substantive justice where no prejudice is shown.
17. The impugned order forms part of the Court record and is undisputed. The omission is not prejudicial. The objection on this ground therefore fails.

Computation of Time and Error on Record

18. The subordinate court judgment was delivered on 13th March 2025.



19. Under Section 79G of the *Civil Procedure Act*, an appeal must be filed within 30 days from the date of judgment.
20. Under Section 57(a) of the *Interpretation and General Provisions Act* (Cap 2), the date of judgment is excluded from computation. Time therefore commenced on 14th March 2025.
21. The 30th day fell on 30th March 2025, which coincided with Eid ul Fitr, a public holiday, and also on a Sunday.
22. The following day, 31st March 2025, was also a public holiday, meaning time did not run on both days.
23. Under Section 57(b) of Cap 2, where the last day falls on a non-working day or public holiday, the deadline rolls over to the next working day.
24. The statutory deadline therefore fell on 15th April 2025.
25. The appeal was filed on 14th April 2025, which was within the statutory time limit.
26. The Court finds that its earlier conclusion that the appeal was time-barred was erroneous, constituting an error apparent on the face of the record.

Whether the Preliminary Objection Is Merited

27. Since the appeal was filed within time, the foundation of the Preliminary Objection collapses.
28. In *Equity Bank Ltd v West Link Mbo Ltd* [2023] eKLR, the Court held that objections premised on incorrect legal assumptions must fail.
29. The Preliminary Objection dated 18th July 2025 is therefore without merit and is dismissed.

Conclusion

30. The Court finds that it has jurisdiction to review its prior order and that a clear error apparent on the face of the record occurred in the computation of time.
31. The Applicant ought not to be denied the right to appeal due to a computational mistake, consistent with Articles 48 and 50 of *the Constitution* guaranteeing access to justice and fair hearing.

Orders

32. The Preliminary Objection dated 18th July 2025 is dismissed with costs.
33. The Notice of Motion dated 26th June 2025 is allowed.
34. The order striking out the appeal is hereby reviewed, set aside, and vacated.
35. The Appeal filed on 14th April 2025 is reinstated and admitted for hearing on merits.
36. Costs of the Motion shall abide the outcome of the appeal.
37. Mention for directions for the main appeal on 6th May 2026.
38. Right of appeal within 30 days.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 30th DAY OF JANUARY, 2026.

S.N.MBUNGI

JUDGE



In the presence of

Elizabeth Angonga-court assistant

Ms Bwatita holding brief for Mr Amasakha for the appellant present online.

Mr Shifwoka for the respondent absent though aware of the ruling date.

