

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**[MILIMANI LAW COURTS]**  
**THE CIVIL APPELLATE DIVISION**  
**(Coram: A.C. Mrima, J.)**  
**CIVIL APPEAL NO. E1091 OF 2024**

**-between-**

**AGRICULTURE EQUIPMENT LTD .....APPELLANT/RESPONDENT**

**-versus-**

**ANJELINE SHINYENZE AMBANI & BERNARD  
SHIKOVOLO.....APPLICANTS/RESPONDENT  
S**

**RULING**

1. This ruling is in respect to the application by way of a Notice of Motion dated 23<sup>rd</sup> April 2025 where the Applicant sought to strike out the appeal with costs as it was filed out of time and without the leave of the Court. The Applicants argued that although leave to appeal out of time was granted by the trial Magistrate on 30<sup>th</sup> August 2024, the Learned Magistrate did not have such jurisdiction as the order ought to have been granted by a Judge under *Section 79G* of the *Civil Procedure Act*, Cap. 21 of the Laws of Kenya. The Applicants filed written submissions buttressing their position.
2. The Respondent/Appellant neither filed any response nor written submissions thereto. That notwithstanding, this Court will nevertheless consider the application.
3. From the record, the instant appeal is in respect to a ruling delivered on 14<sup>th</sup> March 2024 wherein the Appellant's Notice of Motion dated 16<sup>th</sup> February 2024 was partially allowed to the extent of re-opening the matter and allowing a fresh hearing, but the Appellant's quest for leave to file a list of documents and any further evidence was declined. When the ruling was rendered, the Appellant preferred an appeal being *Nairobi [Milimani] High Court Civil Appeal No. E452 of 2024*, by filing a Memorandum of Appeal.

The Respondents filed a Notice of Preliminary Objection which was upheld on the grounds of lack of leave to lodge the appeal. The appeal was subsequently dismissed. The Appellant then returned to the trial Court and filed a Notice of Motion dated 14<sup>th</sup> May 2024 wherein it sought the requisite leave. The application was strenuously opposed by the Respondents, but ultimately allowed *vide* a ruling delivered on 30<sup>th</sup> August 2024. Pursuant to the leave granted, the instant appeal was, hence, lodged. It was on the filing of the current appeal that the Respondents filed the Notice of Motion dated 23<sup>rd</sup> April 2025 seeking to again strike out the appeal on grounds that the leave was not granted by the High Court.

4. *Section 75 of the Civil Procedure Act and Order 43 of the Civil Procedure Rules provides for appeals from orders. Order 43 Rule 3 of the Civil Procedure Rules provides as follows: -*

*An application for leave to appeal under section 75 of the Act shall in the first instance be made to the court making the order sought to be appealed from, either orally at the time when the order is made, or within fourteen days from the date of such order.*

5. The above provision has it that the application for leave to appeal ought to, in the first instance, be made to the Court making the order sought to be appealed from. In this case that Court is the Magistrates Court and not the High Court. The Court was properly moved by the Appellant and heard the Respondents' objections which were overruled and the application allowed. Therefore, this Court finds that the objection raised by the Respondents in this case does not hold and is for rejection.
6. In the end, the application is without merit and the following orders do hereby issue: -

**[a] The Notice of Motion dated 23<sup>rd</sup> April 2025 is hereby dismissed with costs.**

**[b] Since the Appellant has already filed written submissions on the main appeal, the Respondents shall file and serve written submissions within 14 days of this order.**

**[c] The matter shall be fixed for compliance before the Hon. Deputy Registrar on a date to issue.**

Orders accordingly.

**DELIVERED, DATED and SIGNED at NAIROBI this 13<sup>th</sup> day of February, 2026.**

**A. C. MRIMA  
JUDGE**

**Ruling virtually delivered in the presence of:**

**Ms Wangui**, Learned Counsel for the Appellant/Respondent.

**Mr. Kaburu**, Learned Counsel for the Respondents/Applicants.

**Michael/Amina** – Court Assistants.