



**Annes Kisaju Academy v Shikuku (Suing as the Legal Administrator of the Estate of the Late TLS - Deceased) & 3 others (Civil Appeal 28 of 2020) [2026] KEHC 1063 (KLR) (5 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1063 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAJIADO  
CIVIL APPEAL 28 OF 2020  
CW MEOLI, J  
FEBRUARY 5, 2026**

**BETWEEN**

**ST. ANNES KISAJU ACADEMY ..... APPELLANT**

**AND**

**LEONARD MAGONA SHIKUKU (SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF THE LATE TLS - DECEASED) ..... 1<sup>ST</sup> RESPONDENT**

**EMILY SIANTO PERTET (SUING AS THE LEGAL ADMINISTRATRIX OF THE ESTATE OF THE LATE TLS -DECEASED) ..... 2<sup>ND</sup> RESPONDENT**

**ROBERT GITIRA ..... 3<sup>RD</sup> RESPONDENT**

**APPLIED INTERIORS COMPANY LIMITED ..... 4<sup>TH</sup> RESPONDENT**

*(Being an appeal from the judgment of Kabuya, PM delivered on 13th July 2020 in Kajiado CMCC NO 111 of 2018)*

**RULING**

1. Judgment in this appeal was reserved for 5<sup>th</sup> February 2026. However, for reasons that will soon become apparent, the court has instead prepared this ruling. But first, the background to the appeal herein.
2. The appeal emanates from the judgment delivered on 13<sup>th</sup> July, 2020 in Kajiado CMCC No. 111 of 2018. The suit was commenced by way of a plaint filed on 27<sup>th</sup> March, 2018 by the plaintiffs in the lower court, namely, Leonard Magona Shikuku and Emily Sianto Pertet (hereafter the 1<sup>st</sup> and 2<sup>nd</sup> Respondents/Respondents), suing as administrators of the estate of TLS, an 8-year-old boy. It was averred that TLS died in a road traffic accident involving him and motor vehicle KBU 991N (hereafter the accident motor vehicle), allegedly owned by Robert Gitira (the 1<sup>st</sup> defendant in the lower court, hereafter the 3<sup>rd</sup> Respondent), and driven or controlled by his agent or servant, Applied Interiors



Company Limited (the 2<sup>nd</sup> defendant in the lower court, hereafter the 4<sup>th</sup> Respondent). Also sued as the 3<sup>rd</sup> defendant was St. Annes Kisaju Academy, (hereafter the Appellant), the school in which the deceased minor was enrolled before his death.

3. The claim was for damages under the *Law Reform Act* and the *Fatal Accidents Act* in respect of fatal injuries sustained by TLS in the road traffic accident which occurred on 10<sup>th</sup> September 2015. It was averred that the minor was knocked down by the accident motor vehicle while crossing the road, after being dropped by the Appellant's school bus and signaled by the school bus driver to proceed. Negligence was pleaded against all the defendants, as particularized in the plaint.
4. The Appellant filed a statement of defence denying the key averments in the plaint and liability. They also pleaded contributory negligence against the Respondents. Both the 3<sup>rd</sup> and 4<sup>th</sup> Respondents also filed their statements of defence dated 26<sup>th</sup> March, 2019 and 8<sup>th</sup> January 2019 respectively contrary to assertions made before this court on 23.07.2025 with regard to the former Respondent. Be that as it may, by their respective defences, the 3<sup>rd</sup> and 4<sup>th</sup> Respondents equally denied the key averments in the plaint, negligence and liability. The suit proceeded to full hearing, during which three witnesses including the 2<sup>nd</sup> Respondent, Moses Kupere Kupai and John Bosco Kitonyi testified on behalf of the plaintiffs as PW1, PW2 and PW3, respectively. For the Appellant, Eric Maina Nderitu (DW1), a director of the school, was called as a witness.
5. At the close of the hearing, the parties filed their respective submissions. In a judgment delivered on 13<sup>th</sup> July 2020 the trial court found the 3<sup>rd</sup> and 4<sup>th</sup> Respondents on one hand and the Appellant on the other, liable in the ratio of 80:20, respectively, and proceeded to award damages to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in the total sum of Kes. 850,000/- with costs. Aggrieved with the outcome, the Appellant preferred this appeal on 2<sup>nd</sup> September 2020 by lodging the memorandum of appeal of even date. The grounds of appeal primarily challenge the trial court's findings on liability and quantum of damages.
6. From the record, it is apparent that the appeal was admitted on 9.05.2022 by Mutuku J, who subsequently, gave directions that the appeal be canvassed by way of written submissions. Only the Appellant, 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents complied. The Appellant's submissions were confined to the question of liability, as were the 4<sup>th</sup> Respondent's submissions. On their part, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents addressed the twin issues of liability and quantum of damages. However, prefacing their submissions was a legal challenge raised as to the competence of the appeal.
7. To the following effect. The judgment of the lower court having been delivered on 13.07.2020, under Section 79G of the *Civil Procedure Act* (CPA), the Appellant had 30 days within which to lodge their appeal to this court. However, the appeal herein was lodged outside the stipulated period, and without leave of the court, as envisaged by the proviso to Section 79G of the CPA. Counsel therefore contended that this Court lacked jurisdiction to entertain the appeal. Citing the decision in *Owners of Motor Vessel "Lilian" v Caltex Oil (Kenya) Ltd (1989) KLR*, in support of the proposition that jurisdiction is everything, and without it, a court had no power to make one more step. Save to lay down its tools in respect of the matter before it.
8. The Appellant did not seek to address this challenge or seek time or leave to do so, despite the 1<sup>st</sup> and 2<sup>nd</sup> Respondent's submissions having been on record since 20<sup>th</sup> November 2023. The court has considered the record of appeal, the pleadings and original record of the proceedings as well as the submissions with regard to the legal objection taken by the Appellant. It is trite that the question whether an appeal is competent goes to jurisdiction and the court cannot proceed to determine the substantive questions raised in the appeal before dealing with the competence of the appeal.



9. In *Owners of the Motor Vessel Lillian "S"*, (supra) Nyarangi JA (as he then was) expressed himself as follows: -

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. Before I part with this aspect of the appeal, I refer to the following passage which will show that what I have already said is consistent with authority:

“By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognisance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given”

See *Words and Phrases Legally defined – Volume 3: I – N* Page 113”.

10. The learned Judge concluded by stating that:

“It is for that reason that a question of jurisdiction once raised by a party or by a court on its own motion must be decided forthwith on the evidence before the court. It is immaterial whether the evidence is scanty or limited. Scanty or limited facts constitute the evidence before the court. A party who fails to question the jurisdiction of a court may not be heard to raise the issue after the matter is heard and determined.

I can see no grounds why a question of jurisdiction could not be raised during the proceedings. As soon as that is done, the court should hear and dispose of that issue without further ado.

In *Il Congresso del Partido*, [1978] 1 QB 500, *the River Rima*, *Gatoi International Inc v Arkwright – Boston M. M. Insurance Co. & Others* and *The Evpo Agnic*, the respective courts analysed the evidence before the court and upon that evidence the question of jurisdiction was immediately decided.”

11. The pertinent facts can be discerned from the record before the court. The judgement of the lower court was delivered on 13<sup>th</sup> July, 2020 while the memorandum of appeal, dated 2<sup>nd</sup> September, 2020, was filed in court on the same date (and not on 20<sup>th</sup> November 2020 as asserted by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents’ counsel).



12. Section 79G of the *Civil Procedure Act* provides that:

“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. Thus, even by generous estimates, the latest date by which the Appellant ought to have lodged the appeal would be the 14<sup>th</sup> August 2020, which was a Friday, or at worst the 17<sup>th</sup> August 2020 which fell on the next following Monday. Upon the expiration of the stipulated window to appeal, the Appellant could only file an appeal upon leave being granted by the Court, pursuant to the proviso to Section 79G of the CPA. Having perused the entire record of the proceedings and pleadings in the appeal file, the court did not find any application brought by the Appellant to enlarge time for filing this appeal.

14. The appeal before the court is therefore patently incompetent, having been filed out of time, and without leave. The court’s jurisdiction to entertain appeals can only be assumed where its jurisdiction is properly invoked, as prescribed by law. In an analogous situation arising in *Peter Nyaga Muvake - v- Joseph Mutunga* [2015] eKLR, Civil Appeal No. (Nairobi) 86 of 2015 where an appellant filed an appeal to the Court of Appeal without the requisite leave of the High Court, the Court of Appeal had this to say:

“Without leave of the High Court, the Appellant was not entitled to give Notice of Appeal where, as in this case, leave to appeal is necessary by dint of Section 75 of the *Civil Procedure Act* and Order 43 of the Civil Procedure Rules; the procurement of leave to appeal is sine qua non to the lodging of the Notice of Appeal. Without leave, there can be no valid Notice of Appeal. And without a valid Notice of Appeal, the jurisdiction of this court is not properly invoked. In short, an application for stay in an intended appeal against an order which is appealable only with leave which has not been sought and obtained is dead in the water.”

15. It is true that in the above case, by dint of Section 75 of the CPA, an appeal did not lie as of right from the High Court to the Court of Appeal but upon leave. However, the logic therein applies equally to the instant appeal. Similarly in this case, the appeal before the court is incompetent having been filed out of time, and without requisite leave of the court. The jurisdiction of this court has not been properly invoked. The only course of action open to the court is to lay down its tools and strike out the appeal, with costs to the Respondents. It is so ordered.

**DELIVERED AND SIGNED ELECTRONICALLY AT KAJIADO ON THIS 5<sup>TH</sup> DAY OF FEBRUARY 2026.**

**C. MEOLI**

**JUDGE**

In the presence of:

For the Appellant: Ms. Wangui h/b for Ms. Waititu

For the 1<sup>st</sup> and 2<sup>nd</sup> Respondents: Mr. Ochieng

For the 3<sup>rd</sup> Respondent; N/A



For the 4<sup>th</sup> Respondent: Ms. Mwangangi

C/A: Lepatei

