



**Hatari Security Guards Ltd v Wafula (Civil Appeal E232 of 2025)  
[2026] KEHC 1376 (KLR) (11 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1376 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CIVIL APPEAL E232 OF 2025**

**G MUTAI, J**

**FEBRUARY 11, 2026**

**BETWEEN**

**HATARI SECURITY GUARDS LTD ..... APPELLANT**

**AND**

**JOSIAH TEDIUS WAFULA ..... RESPONDENT**

**RULING**

1. The court below delivered a judgment on 25<sup>th</sup> July 2024. Being aggrieved by the said decision, the appellant filed an appeal on 28<sup>th</sup> July 2025 vide a memorandum of appeal of even date. The applicant also filed an application for a stay of execution of the impugned judgment pending the hearing and determination of the appeal, which this court considered on 29<sup>th</sup> July 2025.
2. The respondent, upon being served, entered an appearance and filed a notice of preliminary objection dated 30<sup>th</sup> July 2025, in which his counsel contended that the competence of the appeal. It was urged in the said preliminary objection that the appeal was filed out of time, without leave, and the same offended section 79G of the *Civil Procedure Act*. Counsel for the respondent prayed that the court be pleased to strike out the appeal with costs to his client. The respondent also filed a replying affidavit sworn on 30<sup>th</sup> July 2025.
3. In the said replying affidavit, the respondent averred that upon the entry of judgment on 21<sup>st</sup> January 2024, the applicant applied to have the judgment set aside. This was granted conditionally by the court below on 19<sup>th</sup> September 2024, subject to certain conditions. The appellant didn't meet the said condition, and as a result orders vacating the judgment lapsed.
4. The respondent's counsel filed written submissions. There were no such submissions on the part of the appellant's counsel, who last appeared in court on 30<sup>th</sup> July 2025.



5. Section 79G of the *Civil Procedure Act* states 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.”

6. It is clear that in this case, no leave to appeal out of time was obtained before the filing of the appeal. The appeal so filed is incompetent, invalid, and a nullity with no legal consequences.

7. In the case of *Juma v Pinkertons' Kenya Limited* [2025] KEELRC 2161 (KLR), it was held that:

“The appeal was filed way out of time (30 days after the decision) and without leave of the court; that is not acceptable. The explanations given did not explain the delay, as certification of proceedings does not affect filing of appeal. Before the court, there was no leave sought to file the appeal out of time. The court upholds its own decision in *West Kenya Sugar Co Ltd v Angulu* (Appeal E004 of 2024) [2024] KEELRC 1698 (KLR), where it cited the Supreme Court's decision in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others* in support of the principle that an appeal filed out of time and without leave of court, renders such a document a nullity and of no legal consequence. The memorandum of appeal and entire record of appeal (which was incomplete) is struck off the record.”

8. I agree with the said decision. Being so guided, I strike out the appeal filed herein. I award the respondents the costs of the application and the appeal.

9. It is so ordered.

**DATED AND SIGNED IN MOMBASA, THIS 11<sup>TH</sup> DAY OF FEBRUARY 2026. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.**

**GREGORY MUTAI**

**JUDGE**

In the presence of:

No appearance for the Appellant;

Mr. Nyabena for the Respondent; and

Ms. Bancy - Court Assistant.

