

**IN THE COURT OF  
APPEAL AT  
NAIROBI**

**(CORAM: NJUGUNA, J.A. - IN CHAMBERS)**

**CIVIL APPEAL (APPLICATION) NO. E536 OF  
2022**

**BETWEE**

**N HARAMBEE CO-OPERATIVE**

**SAVINGS AND CREDIT SOCIETY LTD.....APPLICANT**

**AND**

**TOSHIKE CONSTRUCTION COMPANY LIMITED. .RESPONDENT**

*(Being an application to strike out the memorandum of appeal dated 30<sup>th</sup> July 2022 and the record of appeal dated 5<sup>th</sup> August 2022 filed in Court on 17<sup>th</sup> August 2022 and also the Notice of Appeal all arising from the judgment and decree of the Environment and Land Court Case No. E230 of 2019 (Oguttu-Mboya, J.) dated 21<sup>st</sup> December 2021*

*in*

***ELC Case No. E230 of 2019)***

**\*\*\*\*\***

**R U L I N G**

1. The applicant has moved this Court by way of the notice of motion dated 11<sup>th</sup> November 2025 seeking:

***“1. That leave be granted to the respondent/applicant extending time to file an application to strike out the memorandum of appeal dated 30<sup>th</sup> July 2022, the record of appeal dated 5<sup>th</sup> August 2022, and the Notice of Appeal dated 17<sup>th</sup> January 2022.***

- 2. That the application herein dated 11<sup>th</sup> November 2025 be deemed to be duly filed.**
- 3. That the memorandum of appeal dated 30<sup>th</sup> July 2022, the record of appeal dated 5<sup>th</sup> August 2022,**

**and the Notice of Appeal dated 17<sup>th</sup> January 2022 be struck out.  
4. That costs be provided for.”**

2. The application is supported by the affidavit sworn by Felisters Bochaberi Onkware on 11<sup>th</sup> November 2025.
3. She avers that judgment in ELC Case No. 230 of 2019 was delivered on the 20<sup>th</sup> December 2021 in favour of the respondent/ applicant herein.
4. She contends that on 18<sup>th</sup> January 2022, her advocate on record was served with a copy of the Notice of Appeal dated 17<sup>th</sup> January 2022, and a copy of a letter dated 18<sup>th</sup> January 2022 for certified copies of the proceedings.
5. She states that the copy of the Notice of Appeal was yet to be lodged and was also not signed and stamped by the Deputy Registrar, and her advocate on record made a conscious decision to await service of a duly lodged/signed, and stamped Notice of Appeal by the appellant/respondent, but none was ever served on her advocate.
6. It is also the applicant's case that the appellant herein filed an unsigned and unauthenticated memorandum of appeal dated 30<sup>th</sup> July 2022 and that no leave was sought to extend time to file the Notice of Appeal or the appeal herein.

7. The applicant avers that there is no appeal before this Court as the glaring procedural infirmities go to the core of the appeal and therefore the appeal is irremediable.
8. Further, that the judgment and the decree have long been executed with transfer of the subject property having been signed and executed by the Deputy Registrar, and all that is remaining is gazettelement of the converted Land Registration Number from **LR 209/7546** to **Nairobi/Block 37/7**.
9. The respondent/appellant did not file a response to the application.
10. The Court has considered the application and the submissions filed by the applicant.
11. The principles that a Court should consider in exercise of its discretion to extend time were set out by the Supreme Court in the case of **Nicholas Kiptoo Arap Salat vs. IEBC & 7 Others** (Supreme Court Application No. 16 of 2014) [2014] eKLR, which include:
  - a) ***The length of the delay;***
  - b) ***The delay is explained to the satisfaction of the Court;***
  - c) ***Whether there will be prejudice suffered by the respondent if the extension is granted;***
  - d) ***Whether the application is brought without undue delay; and***
  - e) ***Public interest, among others.***

12. The Court has noted the explanation offered by the applicant for the delay and the prospect of the success of the application that the applicant intends to file. The applicant was never served with a valid notice of appeal.

13. In the circumstances, this Court finds that the application has merit. The same is partially allowed in the following terms:

***a) The applicant is granted leave to file an application to strike out the memorandum of appeal, the record of appeal and Notice of Appeal as prayed.***

***b) The applicant to file in Court a separate application to strike out the pleadings stated in (a) above.***

***c) The same to be filed within seven (7) days from today.***

***d) No orders as to costs.***

**Dated and delivered at Nairobi this 6<sup>th</sup> day of March 2026.**

**L. NJUGUNA**

.....  
**JUDGE OF  
APPEAL**

*I certify that this is a  
true copy of the original*

*Signed*

**DEPUTY REGISTRAR**