



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**ELC L MISC APPLICATION NO. E076 OF 2025**

**THE ESTATE OF GERISHON KAMAU KIRIMA  
THROUGH THE ADMINISTRATRIX  
ANNE  
KIRIMA.....CLIENT/APPLICANT** **W**

**VERSUS**

**S. MUSALIA MWENSI ADVOCATES  
NYAMU & NYAMU ADVOCATES  
P.C. CONDUSO & CO  
ADVOCATES.....ADVOCATES/RESPONDENTS**

**RULING**

1. Before me for determination is the Notice of Motion dated 2<sup>nd</sup> December 2025, brought under Article 159(2)(d) of the Constitution of Kenya 2010, Section 4(2) and 13(7) of the Environment and Land Court Act, and Paragraph 11(1) of the

Advocates (Remuneration) Order, Cap 16, in which the Applicant seeks the following orders:

**a) Spent.**

**b) THAT the Honourable Court be pleased to grant leave to the Applicant to file an appeal before the Court of Appeal against the Ruling, Order, and Decree of the Honourable Lady Justice T. Murigi of the Environment and Land Court at Nairobi, delivered on 21st November 2025 (hereinafter the 'ruling').**

**c) THAT the Notice of Appeal dated 2<sup>nd</sup> December 2025 annexed to the application herein be considered as duly filed and lodged for purposes of lodging an appeal before the court of appeal against the Ruling, Order, and Decree of the Honourable Lady Justice T. Murigi of the Environment and Land Court at Nairobi delivered on 21<sup>st</sup> November 2025.**

**d) THAT the costs of this application to abide by the intended appeal.**

2. The application is based on the grounds appearing on its face together with the supporting affidavit of Anne Wangari Kirima, sworn on even date.

### **THE APPLICANT'S CASE**

3. The Applicant averred that she is dissatisfied with the Ruling delivered on 21<sup>st</sup> November 2025 dismissing the Chamber Summons dated 2<sup>nd</sup> April 2025 and intends to lodge an appeal in the Court of Appeal.

4. She contended that the right of appeal against a decision on a reference arising under Paragraph 11 of the Advocates Remuneration Order does not lie as of right, hence the present application.
5. The Applicant attached its intended Notice of Appeal and argued that the application was filed promptly and would not prejudice the Respondents.
6. Though duly served, the Respondents did not file any response to the application.

#### **ANALYSIS AND DETERMINATION**

7. Having considered the application and the supporting affidavit, the issue for determination is whether the Applicant has met the threshold for the grant of leave to appeal against the ruling delivered on 21<sup>st</sup> November 2025
8. The legal position on appeals from decisions made under paragraph 11 of the Advocates Remuneration Order is well settled. Paragraph 11(3) provides that an appeal shall lie to the Court of Appeal from a judge's decision on a reference only with the leave of the judge.
9. The principles governing the grant of leave are well settled.

In **Machira & Co Advocates v Arthur K. Magugu &**

**another (2012) eKLR,** the Court of Appeal held that a Judge's decision on a reference is final unless leave is granted. The grant of leave is discretionary and intended to filter out frivolous appeals. The court must be satisfied that the intended appeal is arguable and not frivolous or intended to delay the matter.

10. The record shows that the Applicant has already filed a Notice of Appeal. Although no draft memorandum of appeal has been annexed, the Applicant has expressed dissatisfaction with the decision. The absence of such a memorandum is not fatal when the grounds set out in the application demonstrate dissatisfaction with the decision.

11. In the absence of opposition and being satisfied that the intended appeal is not frivolous, this court is persuaded to exercise its discretion in favour of the Applicant.

12. Accordingly, the application dated 2<sup>nd</sup> December 2025 is allowed on the following terms:

***a) Leave is hereby granted to the Applicant to appeal against the order of this court within 14 days from the date hereof.***

- b) The Notice of Appeal is deemed as duly filed  
for the purposes of filing the Appeal***
- c) Costs in the cause.***

**RULING SIGNED, DATED, AND DELIVERED VIA  
MICROSOFT TEAMS THIS 11<sup>TH</sup> DAY OF FEBRUARY, 2026.**

.....  
**HON. T. MURIGI  
JUDGE**

**IN THE PRESENCE OF: -**

Rao for the Applicant

Ahmed-Court assistant