



**Kiptangus v Kipkemoi (Civil Appeal E024 of 2025)
[2026] KEHC 2405 (KLR) (19 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2405 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CIVIL APPEAL E024 OF 2025
JK SERGON, J
FEBRUARY 19, 2026**

BETWEEN

ALLAN KIPTANGUS APPELLANT

AND

ROTICH VICTOR KIPKEMOI RESPONDENT

RULING

1. The subject matter this ruling is the motion dated 24th July, 2025 in which Rotich Victor Kimutai, the Respondent herein, sought for the following Orders:-
 - i. The Appeal filed herein be dismissed for being devoid of merit and constituting an abuse of the process of the Court.
 - ii. The Appeal fails to raise any triable issue of law or fact and should be summarily struck out pursuant to Order 36 Rule 1.
 - iii. Alternatively, Judgment be entered against the Appellant on the basis of the Low Court Proceedings.
 - iv. Costs of this Application be borne by the Appellant.
2. The Respondent filed an Affidavit he swore in support of the motion. When served with the aforesaid motion, Allan Kiptangus, the Appellant herein filed a Replying Affidavit he swore to oppose the same. The Court gave directions to have the motion disposed of by written submissions.
3. I have considered the grounds stated on the face of the motion and the facts deponed in the rival Affidavits. I have equally considered the rival written submissions plus the authorities cited. It is the submission of the Respondent, that this Appeal frivolous, vexatious and meant to delay execution of a lawful Judgment. It is also pointed out that the Appeal raises no substantial question of law and instead it merely restates the facts already adjudicated.



4. For the above reasons, this court has been urged to dismiss the Appeal. In response, the Appellant argued that the instant application is aimed at delaying the cause of justice and is an abuse of the Court process. The Appellant further argued that the Respondent had failed to give reasons to justify the dismissal of this Appeal.
5. The Appellant also argued that it fully complied with order 42 rule 1 of the Civil Procedure rules. The Appellant stated that the Memorandum of Appeal is proper and complied with all the legal requirements. The Appellant further argued that the Appeal raises substantial point of law.
6. The background the instant Appeal is that the Respondent filed statement of claim and sought for Judgment of Kshs.400,000/=, compensation plus costs. The Learned adjudicator, on 13th January, 2025 entered Judgment in favour of the Respondent in the sum of Kshs.400,000/= plus interest and costs.
7. The Appellant/Respondent namely Allan K Kipangus being dissatisfied, filed an Application for review dated 14th January, 2025. He sought for the decision of the adjudicator review and set aside claiming that the same was obtained through misrepresentation and material non-disclosure. The learned adjudicator heard the application and had it dismissed vide her ruling delivered on 25th February, 2025. Being dissatisfied, the Appellant preferred this Appeal and put forward 7 grounds of Appeal.
8. The Respondent has now filed the instant application seeking to have the Appeal dismissed for the grounds stated hereinabove.
9. I have already stated the arguments of the parties. It is clear from the record that the Appellant filed an Application seeking to have the judgment of the Small Claims Court reviewed and set aside under Order 45 rule 1 of the Civil Procedure Rules. The Learned Adjudicator dismissed the Application for review on the basis that the same did not meet the threshold for application for review. In fact the Learned Adjudicator stated that the Appellant should have instead appealed against her Judgment. In the instant Appeal, the Appellant has sought for the setting aside of the Judgment and ruling of the adjudication.
10. It's important to note that the instance Appeal was filed on 13th March, 2025. The impugned Judgment was delivered on 13th January, 2025. It is therefore apparent that the Appellant filed the Appeal after the lapse of more than 30 days. There is no evidence that the Appellant applied for leave to file an Appeal out of time. In the absence of an order granting leave to Appeal out of time, then the Appeal is incompetently before this Court and prima facie the same is an abuse of the Court process.
11. Of course, the Appeal as against the ruling on 25th February, 2025 was filed within 30 days hence, it is properly before this Court.
12. The question is whether the same raises any points of law. I have already taken into account the rival arguments presented to this Court over the issue. It is apparent from the grounds put forward in the memorandum of Appeal that the Appellant has basically restated matters of facts. A critical examination of the proceedings and the ruling will reveal that the Appellant has just regurgitated what he had argued before the Trial Court while arguing his application for review.
13. Under Section 38 of the *Small Claims Court Act*, it is expressly stated that a person aggrieved by the decision or an order of Court may appeal to the High Court on matters of law. With respect, I am convinced by the Respondent/Applicant's argument that the Appellant did not raise any substantial point of law on Appeal as envisaged under Section 38 of the *Small Claims Court Act*.



14. In the end, I find the motion dated 24th July, 2025 to be meritorious. It is allowed. Consequently, the instant Appeal is ordered struck out and dismissed. Costs to be awarded to the Respondent/Applicant.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 19TH DAY OF FEBRUARY, 2026

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J.K. SERGON

JUDGE

In the presence of:-

C/Assistant - Ruto

No Appearance

