

- (i) The Record of Appeal dated 22nd September 2025 be struck out with costs;**
- (ii) The costs of this application be awarded to the 1st Respondent/Applicant.**

2. The application is supported by the Supporting Affidavit of **Mathew Njoroge Kabetu** sworn on **4th December 2025** and the written submissions of even date.
3. The Appellant/Respondent opposes the application through the Replying Affidavit of **Joseph Njenga Kiarie** sworn on **28th January 2026** and her written submissions filed in opposition.
4. The dispute originates from the judgment of the **Magistrate's Court at Milimani Commercial Courts (MCELC/E107/2022)** delivered on **17th July 2025**. In that judgment, the learned Magistrate declared that there was no valid sale agreement between the parties in respect of **L.R. No. Nairobi/Block 105/6080 (non-compliance with Section 3(3) of the Law of Contract Act (Cap 23))**. The Plaintiff now 1st Respondent was declared the rightful owner, the register was ordered to be

rectified, and the 1st Defendant now Appellant was ordered to refund the purchase price together with costs.

5. Aggrieved by the judgment, the Appellant filed a Notice of Appeal on **17th July 2025 lodged on 22nd July 2025.**

The Record of Appeal was dated **22nd September 2025 and filed on 1st October 2025.**

6. The Applicant contends that the appeal is fatally out of time, no application for extension of time was filed, and no Certificate of Delay was obtained or exhibited.

7. The Appellant counters that the delay was occasioned solely by the lower court registry's failure to supply the proceedings timeously, that she acted diligently, and that this Court should exercise its discretion under **Article 159(2)(d) of the Constitution** to admit the appeal in the interests of substantive justice.

8. Having considered the application, the supporting and replying affidavits together with their annexures, the rival submissions and the authorities cited, This court has outlined the following two salient issues in determining the said applications;

- i) Whether the appeal was filed out of time contrary to Section 79G of the Civil Procedure Act;***
- ii) Whether the absence of a Certificate of Delay is fatal;***
- iii) Whether the Appellant has demonstrated sufficient cause warranting the exercise of discretion to enlarge time.***

9. The right of appeal from a subordinate court to the Environment and Land Court is governed by **Section 79G of the Civil Procedure Act**, which provides:

“Every appeal from a subordinate court to the High Court [or Environment and Land 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.”

10. The proviso to **Section 79G, read together with Order 50 Rule 6 of the Civil Procedure Rules** and the inherent powers of the Court under **Section 3A of the Civil Procedure Act**, confers discretion to enlarge time. This discretion must, however, be exercised judicially and not as of right. **Section 16A of the Environment and Land Court Act** mirrors the 30 day timeline for appeals in land matters.
11. The Supreme Court of Kenya in the landmark case of **Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR** laid down the authoritative principles guiding the exercise of discretion to extend time to the effect that extension of time is an equitable remedy available only to a deserving party; the applicant bears the burden; the decision is case-specific; the delay must be explained satisfactorily; prejudice to the respondent must be considered; the application must be brought without undue delay.
12. These principles have been consistently applied by the Court of Appeal and the Environment and Land Court.

13. It is common ground that judgment was delivered on 17th July 2025. The 30-day period prescribed by Section 79G expired on or about 16th August 2025. The Record of Appeal was filed on 1st October 2025 approximately 45 days late. The appeal was therefore filed out of time. The filing of a Notice of Appeal does not constitute the filing of the appeal itself as stated in the case of **County Executive of Kisumu v County Government of Kisumu & 8 Others [2017] eKLR.**
14. The Appellant requested certified proceedings on 18th July 2025 and attributes the delay to the lower court registry. However, no Certificate of Delay issued by the trial court has been exhibited
15. The proviso to **Section 79G** is explicit: time taken for preparation and delivery of proceedings is excludable only upon certification by the lower court. In the absence of such a certificate, the entire period between 17th July 2025 and 1st October 2025 remains unaccounted for in law. Informal explanations are not substitutes as was stated in the cases of **Gerald M'limbine v Joseph Kangangi [2009] eKLR; County Executive of Kisumu (supra);**

Chase Bank (K) Limited v Coninx Industries Limited
[2021] eKLR).

16. The absence of the certificate is therefore fatal.
17. Even assuming this Court may consider enlargement though no formal application was filed, the Appellant has not discharged the burden under the Salat principles. The explanation remains general on registry delay and diligent follow-up without particularity on dates of receipt of proceedings or steps taken thereafter.
18. While **Article 159(2)(d) of the Constitution** enjoins courts to administer substantive justice without undue regard to technicalities, it does not permit disregard of mandatory statutory timelines that go to jurisdiction.
19. The Appellant has not demonstrated overriding cause. The lower court's finding on the invalidity of the sale agreement raises arguable points, but this does not cure the jurisdictional defect at the threshold stage.
20. The cumulative effect of filing out of time, without leave, and without a Certificate of Delay renders the appeal incompetent ab initio. A court lacking jurisdiction

must down its tools. Striking out is the only appropriate remedy.

21. On the question of costs, the settled principle is that costs follow the event unless there are compelling reasons to depart from it. The 1st Respondent is the successful party. He is therefore entitled to his costs, which this Court assesses at Ksh. 30,000/= (all inclusive) to be borne by the Appellant.

22. In the end, it is the finding of this court that the 1st Respondent/Applicant's Notice of Motion dated **4th December 2025** is meritorious and is hereby allowed in the following terms;

(i) The Record of Appeal dated 22nd September 2025 and filed on 1st October 2025 is hereby struck out.

(ii) The Appellant shall pay the costs of this application to the 1st Respondent/Applicant, assessed at an all inclusive sum of Ksh. 30,000/=

(iii) This file shall be marked as closed.

**Dated, Signed and Delivered Virtually this 21st day
of April, 2026.**

**E. K. WABWOTO
JUDGE**

In the presence of: -

Ms. Chemutai for the Appellant.

Ms. Gitari h/b for Mr. Gitonga for the 1st

Respondent.

N/A for the 2nd and 3rd Respondents.

Court Assistants: Mary Ngoira and David Ngoosa.