



**Nthiga v Kirika (Legal representative of the Estate of John Kiereni Kirika) & 2 others
(Land Case Appeal E051 of 2024) [2026] KEELC 2621 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2621 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
LAND CASE APPEAL E051 OF 2024
EC CHERONO, J
APRIL 30, 2026**

BETWEEN

JOHN NYAGA NTHIGA APPELLANT

AND

**MARY WANJIKU KIRIKA (LEGAL REPRESENTATIVE OF THE ESTATE OF
JOHN KIERENI KIRIKA) 1ST RESPONDENT**

**NJANJA KIEREINI MUGUONGO (LEGAL REPRESENTATIVE OF THE
ESTATE OF JOHN KIEREINI KIRIKA) 2ND RESPONDENT**

ESTHER NYOKABI KIRIKA 3RD RESPONDENT

RULING

Introduction

1. The Respondents/Applicants filed a Notice of Motion dated 4th November 2025 (supported by the affidavit of Mary Wanjiku Kirika sworn on even date) seeking to strike out the Memorandum of Appeal dated 31st October 2024 and/or the Record of Appeal dated 22nd September 2025 in its entirety, with costs. The application is brought under Order 42 Rule 12, Order 51(1), and Rules 1A, 1B & 1C of the Civil Procedure Rules, 2010 (CPR).
2. The core complaint is that the Appellant served the Memorandum of Appeal on the Respondents on or about 25th September 2025 — nearly ten (10) months after filing and admission of the appeal — in violation of the mandatory seven (7)-day service requirement under Order 42 Rule 12 CPR. The Applicants argue that this inordinate delay is prejudicial, as they had closed the file, settled advocates' fees, and proceeded with administration of the deceased's estate, believing the matter finalized. They contend that procedural timelines are not mere technicalities but ensure orderly and expeditious justice.



3. The Appellant opposed the application through Grounds of Opposition dated 3rd February 2026, asserting that: (i) the application is fatally defective; (ii) a Memorandum of Appeal is only served after admission by the Deputy Registrar and notification to the parties; (iii) no such formal notice was issued; and (iv) the Applicants are relying on technicalities contrary to the merits of the appeal and Article 159(2)(d) of *the Constitution*. The Appellant further submitted that there is no requirement for a Notice of Appeal or prior notification of intention to appeal in the Environment and Land Court. Both parties filed written submissions, which the Court has carefully considered.
4. The appeal arises from the judgment of the trial court in Embu CMCC No. 168 of 2013 delivered on 3rd October 2024. The Memorandum of Appeal was filed and admitted on or about 4th November 2024, with a case number issued. The Record of Appeal was prepared and dated 22nd September 2025 and served by email on 25th September 2025. The Applicants deposed that they received no indication of an appeal within the statutory period, leading them to archive the matter. Numerous mention dates were fixed to confirm progress on the Record of Appeal, but service of the Memorandum occurred only after a delay of approximately ten months. No formal explanation or affidavit has been filed by the Appellant accounting for this delay.

Issues for Determination

1. Whether service of the Memorandum of Appeal is mandatory under Order 42 Rule 12 CPR and, if so, the consequences of non-compliance.
2. Whether the delay of nearly ten months in effecting service warrants striking out the appeal.
3. Whether the procedural lapse amounts to a mere technicality curable under Article 159(2)(d) of *the Constitution* or goes to the root of the appeal.
4. Who should bear the costs.

Analysis and Determination

6. Order 42 Rule 12 CPR provides:

After the refusal of a judge to reject the appeal under section 79B of the Act, the registrar shall notify the appellant who shall serve the memorandum of appeal on every respondent within seven days of receipt of the notice from the registrar.
7. The rule uses mandatory language (“shall”). The scheme under Order 42 CPR is that once the appeal is admitted (following scrutiny under section 79B of the *Civil Procedure Act* or directions), the Registrar notifies the appellant, triggering the 7-day service obligation. Service then enables the next step under Order 42 Rule 13 — listing for directions on notice to the parties not less than 21 days after service of the Memorandum.
8. The Appellant’s contention that service only arises after formal notification by the Deputy Registrar, and that no such notice was issued, has some basis in the literal wording of the rule. However, the Court record shows the Memorandum was admitted on 4th November 2024 with a case number assigned, and the matter was mentioned several times for progress on the Record of Appeal. These steps constituted sufficient notice that the appeal was live and active before this Court. The Appellant cannot benefit from any alleged administrative omission by the Registry to issue a formal “notice” while failing to take proactive steps to serve the opposing party for ten months. Courts have held that where directions are given or the appeal is admitted, the obligation to serve crystallizes, and an appellant cannot plead its own default or Registry inaction as an excuse.



9. The ten-month delay in service is inordinate and unexplained. The Applicants have demonstrated prejudice: they reasonably believed the litigation concluded, settled advocates' fees, archived the file, and took steps to administer the estate. Such delay undermines the finality of litigation and the constitutional imperative under Article 159(2)(b) that justice shall not be delayed. Litigation must come to an end, and parties are entitled to certainty.
10. Kenyan jurisprudence emphasizes that while Article 159(2)(d) directs courts to administer justice without undue regard to procedural technicalities, this does not render mandatory procedural rules nugatory or permit parties to flout them with impunity. The provision guards against slavish adherence to form at the expense of substance, but it does not excuse flagrant, unexplained, and prejudicial non-compliance with timelines that go to the root of procedural fairness. Courts have struck out appeals for similar delays in service or prosecution where no satisfactory explanation is offered. The cases cited by the Applicants, including principles from *Nicholas Kiptoo Arap Salat v Independent Electoral and Boundaries Commission & 7 Others* (emphasizing strict timelines in certain proceedings) and *Charles Wanjohi Wathuku v Githinji Ngure*, reinforce that procedural rules serve the broader interests of justice, efficiency, and fairness.
11. The Respondents' reliance on cases such as *Ayub Murumba Kaikai v Town Clerk of Webuye County Council* and *Shabbir Ali Jusab v Anaar Osman Gamrai* (which often turn on minor or rectifiable lapses or specific facts) is distinguishable. Here, the delay is gross (ten months versus seven days), unexplained, and coupled with demonstrated prejudice to the estate. The Memorandum and Record of Appeal are distinct but interconnected; failure to properly activate the appeal by timely service affects the entire process.
12. The Application is not fatally defective. The grounds and supporting affidavit clearly set out the basis for striking out — violation of Order 42 Rule 12 CPR and prejudice. Grounds of Opposition cannot controvert factual averments in a supporting affidavit without a replying affidavit.
13. In the Environment and Land Court, while the Court is enjoined to act expeditiously and without undue regard to technicalities (section 23 of the *Environment and Land Court Act*), this does not override the CPR where they apply, nor does it permit one party to subject the other to prolonged uncertainty.

Conclusion

14. The Applicants have made out a case for striking out. The unexplained inordinate delay in serving the Memorandum of Appeal, contrary to the mandatory requirement under Order 42 Rule 12 CPR, coupled with prejudice to the Respondents, justifies the orders sought. Procedural rules exist to facilitate, not frustrate, justice. Allowing the appeal to proceed in these circumstances would reward dilatory conduct and undermine public confidence in the finality and efficiency of judicial processes.
15. Accordingly, the Notice of Motion dated 4th November 2025 is allowed in the following terms:
 1. The Memorandum of Appeal dated 31st October 2024 and the Record of Appeal dated 22nd September 2025 are hereby struck out in their entirety.
 2. The Appellant shall pay the costs of this Application and of the struck-out Appeal to the Respondents.

DATED, SIGNED AND DELIVERED VIRTUALLY/AT EMBU THIS 30TH DAY OF APRIL, 2026.



HON. E. C. CHERONO

ELC JUDGE

In the presence of:

Mr. Okwaro for the Appellants

Mr. Okech for the Respondent

Diana Kemboi C/A

