



**Gathuma & another v Hinga (Civil Appeal (Application)  
259 of 2020) [2025] KECA 256 (KLR) (21 February 2025) (Ruling)**

Neutral citation: [2025] KECA 256 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL (APPLICATION) 259 OF 2020  
W KARANJA, J MOHAMMED & AO MUCHELULE, JJA  
FEBRUARY 21, 2025**

**BETWEEN**

**WILLIAM MWANGI GATHUMA ..... 1<sup>ST</sup> APPLICANT**

**JANET WANJIKU MWANGI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**ANN MUMBI HINGA ..... RESPONDENT**

*(An application for striking out an appeal against the Judgment and Decree of the Environment and Land Court at Nairobi (J. G. Kemei, J.) dated 22nd September 2017 in ELC No. 34 of 2011)*

**RULING**

1. There is a notice of appeal dated 27<sup>th</sup> September 2017 and lodged on the same date with the Registrar of the Environment and Land Court at Nairobi. It indicated that the respondent Anne Mumbi Hinga was dissatisfied with the whole of the judgment delivered on 22<sup>nd</sup> September 2017 by that Court. The dispute was regarding one acre in LR No. 18096. The applicants, William Mwangi Gathuma and Janet Wanjiku Mwangi, were the successful parties in the claim. The notice of appeal was filed on behalf of the respondent by Gathara Mahinda & Company Advocates. A record of appeal dated 26<sup>th</sup> June 2020 was filed on behalf of the respondent by the same firm.
2. What is before us is an application by way of notice of motion dated 2<sup>nd</sup> February 2021 in which the applicants have applied to have the record of appeal struck out because it was filed on behalf of the respondent by a law firm that was not then acting for them, and secondly because the record of appeal was filed out of time and without leave. Under the proviso to Rule 84 of the *Court of Appeal Rules*, an application to strike out ought to be filed within 30 days from the date of service of the record of appeal. (See *Salama Beach Hotel Limited & 4 Others v Kenyariri & Associates Advocates & 4 Others* [2016]eKLR). It is because the applicant did not bring the application seeking to strike out the record of appeal within 30 days of service that in prayer one of this notice of motion, they have sought to bring



the application out of time. They have explained why they could not bring the application within 30 days.

3. The notice of motion was brought under Rules 4 and 84 of this Court's Rules.
4. We have read the replying affidavits by the respondents and advocate Simon Ndege. They did not dispute the fact that the record of appeal was filed on 26<sup>th</sup> June 2020. Certainly, that was way beyond the 60 days that Rule 84 of the Rules provides. There was no leave to file the record of appeal out of time.
5. The second issue that was pointed out about the record of appeal was that the firm of Gathara Mahinda & Company Advocates that allegedly filed the record of appeal have disowned it. Geoffrey G. Mahinda is the proprietor of the law firm and wrote a letter dated 13<sup>th</sup> July 2020 to the Deputy Registrar of this Court to state that he had no instructions to appeal and did not draw or file the record of appeal. The respondent and counsel Simon Ndege attempted to dispute this but they were not successful, in our view. Geoffrey G. Mahinda's letter stated categorically that the documents filed in Court in his law firm's name were a forgery. Simon Ndege stated that there was a misunderstanding between the law firm and the respondent over fees, but he agreed in paragraphs 10 and 11 of his replying affidavit that the record of appeal was indeed filed in the firm of Gathara Mahinda & Company Advocates. By then, he states, he had taken over the brief. He stated that the record of appeal, although physically filed by his law firm, was in the name of Gathara Mahinda & Company Advocates with the "knowledge, blessing and consent" of Geoffrey G. Mahinda. He, however, did not get Geoffrey G. Mahinda to swear that his law firm's name was used with his knowledge and consent. We accept that the record of appeal was filed in the name of a law firm that has denounced it. The use of the law firm's name was a forgery. The consequence is that the record of appeal is incompetent, having been filed by a stranger in the proceedings.
6. What do we do with this obviously forged and incompetent record of appeal; an appeal that was in the first place filed outside the statutory period and without leave? In our considered view, the proviso to Rule 84 did not contemplate the situation that is obtaining in this application. A forged record of appeal is as good as no appeal, and would be a travesty of justice to allow it to remain. There is simply no appeal. What the applicants have on record deserves striking out, which we do with costs to the respondent.

**DATED AND DELIVERED AT NAIROBI THIS 21<sup>ST</sup> DAY OF FEBRUARY, 2025.**

**W. KARANJA**

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**JUDGE OF APPEAL**

**JAMILA MOHAMMED**

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**JUDGE OF APPEAL**

**A. O. MUCHELULE**

.....

**JUDGE OF APPEAL**

I certify that this is the true copy of the original.

Signed

**DEPUTY REGISTRAR.**

