



**Katama v Itute & another (Civil Application E533 of 2024)  
[2025] KECA 682 (KLR) (11 April 2025) (Ruling)**

Neutral citation: [2025] KECA 682 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E533 OF 2024**

**M NGUGI, JA**

**APRIL 11, 2025**

**BETWEEN**

**BERNARD NGUI KATAMA ..... APPLICANT**

**AND**

**MARIA KIMUNYI ITUTE ..... 1<sup>ST</sup> RESPONDENT**

**MICHAEL MASAKU MUTISYAA ..... 2<sup>ND</sup> RESPONDENT**

*(Being an application for leave to file a memorandum of Appeal and record of appeal out of time against the judgment of the High Court at Makueni (M.T. Matheka J.) dated 6th September 2024 in High Court Civil Appeal No. E035 of 2023)*

**RULING**

1. In the application dated 15<sup>th</sup> October, 2024, Bernard Ngui Katama, the applicant, seeks leave to file his memorandum of appeal and record of appeal out of time against the judgment of the High Court at Makueni (M.T. Matheka J.) dated 6<sup>th</sup> September, 2024. He further prays that the Court be pleased to extend time for filing the notice of appeal, and that the notice of appeal already filed be deemed as properly filed. I note that the decision in question, dated 6<sup>th</sup> September 2024 is a ruling on an application for review of its judgment dated 15<sup>th</sup> April 2024.
2. The application is expressed to be brought under “Article 59 of *the Constitution*, Section 3, 3A & 3B of the Appellate Jurisdiction Act, Rule 4, 41 and 43 of the Court of Appeal Rules, 2010’.





3. The application is based on the grounds on its face and a supporting affidavit sworn by the applicant on 15<sup>th</sup> October 2024. The applicant avers that after the Court delivered its ruling on 6<sup>th</sup> September 2024, he convened a meeting to see if he and the respondents could reach an amicable resolution of the matter. He avers that it is only after the respondents totally refused to cooperate that it became necessary for him to file an appeal, and he filed the notice of appeal just three days outside the prescribed 7-days for filing the notice. He asserts that he has an arguable appeal with overwhelming chances of success, and it is in the interests of justice that the application be allowed so that he can file his appeal and it be heard on merit.
4. There is no response to the application, nor have the parties filed submissions.
5. I have considered the application and the affidavit in support, and it appears to me that the present application is precipitated by a mis-reading of the Rules of this Court. Rule 77 of the Court of Appeal Rules, 2022 provides that:
  1. A person who desires to appeal to the Court shall give notice in writing, which notice shall be lodged in two copies, with the registrar of the superior court.
  2. Each notice under sub-rule (1) shall, subject to rules 84 and 97, be lodged within fourteen days after the date of the decision against the decision for which appeal is lodged.
6. The appellant thus had fourteen (14) days from the date of the ruling he seeks to appeal from the 6<sup>th</sup> of September 2024, and he thus had until 20<sup>th</sup> September 2024 to file his notice of appeal. He avers that he lodged a notice of appeal dated 16<sup>th</sup> September 2024 at the registry on 17<sup>th</sup> September 2024. Contrary to his averment that he lodged the notice 3 days late, he was within the timeframe set by the rules for filing a notice of appeal. He did not therefore need to seek the leave of the Court to file a notice of appeal, and this application was therefore unnecessary.
7. For what it is worth, the notice of appeal is deemed as duly filed. However, the appellant may yet have to contend with the requirements of rule 84 of the Rules of this Court with regard to filing of the record of appeal, which should be filed within 60 days of the lodging of the notice of appeal. Although



the appellant has prayed for extension of time to file the memorandum and record of appeal, he has not averred or placed before me anything to indicate that he has applied for the proceedings. I am therefore unable, at this stage, to grant orders in respect of the memorandum and record of appeal.

8. Given the nature of the dispute, however, a burial dispute over where the mortal remains of the deceased are to be laid to rest, that has seen the remains lying in a morgue for well-nigh a year, it is my hope that the applicant will reconsider the matter and, with the respondents, accord the deceased some dignity in death with a decent burial. It cannot be that difficult to find a six by six plot to lay the deceased to rest.
9. There shall be no order as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 11<sup>TH</sup> DAY OF APRIL, 2025**

**MUMBI NGUGI**

.....

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

