



**Henry v Kithinji (Civil Application E086 of 2024)
[2025] KECA 1254 (KLR) (27 June 2025) (Ruling)**

Neutral citation: [2025] KECA 1254 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E086 OF 2024
S OLE KANTAL, JW LESSIT & AO MUCHELULE, JJA
JUNE 27, 2025**

BETWEEN

CONSTANT GAKURU HENRY APPLICANT

AND

KENNETH KINOTI KITHINJI RESPONDENT

*(An application for striking out the Notice of Appeal against the
Judgment of the Environment and Land Court at Meru (C.K. Nzili, J.)
delivered on 31st July, 2024 in E.L.C. Civil Appeal No. E024 of 2022)*

RULING

1. The applicant, Constance Gakuru Henry by Motion on notice brought under section 3A and 3B of the [Appellate Jurisdiction Act](#) and rule 79(1) of the Court of Appeal Rules prays that we be pleased to strike out Notice of Appeal dated 5th August, 2024 filed on 12th August, 2024 for having been served out of the prescribed time and that we provide for costs. In grounds in support of the application and in a supporting affidavit a lawyer, John Muthomi, it is said amongst other things that the High Court delivered a judgment In Meru Environment and Land Court (ELC) on 31st July, 2024 allowing the appeal filed by the applicant; that the respondent (Kenneth Kinoti Kithinji) filed a notice of appeal on 12th August, 2024 and served the same by email on 29th August, 2024; that notice of appeal is irregular and defective as it was served outside 7 days prescribed by rule 79 of the Court of Appeal Rules. It is also stated that the respondent has not shown whether he has applied for proceedings to enable him appeal. Attached to the affidavit are copies of notice of appeal, filing Receipt and a screenshot of an email message.



2. The respondent in a replying affidavit depones that he filed notice of appeal timeously through his previous lawyers; that he applied for proceedings and judgment. He admits that notice of appeal was not on time served as required stating:
 6. That sadly for me I have come to realize through this application that there was late service of the Notice of appeal. That it was served on 29.8.2024 through email that is 10 days out of time through the firm of Steve Muriira & Co. Advocates my previous counsel.”
3. He blames his previous lawyer for not serving notice of appeal within the time stipulated in the rules; he states that he is illiterate and that he has since instructed his current lawyer to act for him in the matter.
4. When the matter came up for hearing before us on 11th March, 2025 learned counsel Mr. John Muthomi appeared for the applicant while learned counsel Mr. Muia Mwanzia appeared for the respondent. Both sides had filed written submissions which they relied on with Mr. Muthomi reminding us that the respondent had not applied for extension of time to serve the notice out of time.
5. We have considered the application, written submissions, cases cited and the law.
6. Rule 79 of our rules which is couched in mandatory terms requires an intended appellant to serve copies of notice of appeal on all persons directly affected by the appeal before or within 7 days after lodging such notice.
7. We have looked at notice of appeal dated 5th August, 2024. It was not lodged with the Registrar as required. It is admitted that the same was served on the applicant outside the time required in law. To make it worse for the respondent we note that the letter bespeaking proceedings dated 5th August, 2024 was not copied to the applicant and the respondent cannot benefit from the proviso to rule 84 of the rules which excludes certain days where an application for proceedings has been made on time with a copy to the other side.
8. The respondent has not applied for time-extension and in those premises the notice of appeal is irregular and defective and we strike it out with costs to the applicant.

DATED AND DELIVERED AT NYERI THIS 27TH DAY OF JUNE, 2025.

S. ole KANTAI

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JUDGE OF APPEAL

J. LESIIT

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JUDGE OF APPEAL

A. O. MUCHELULE

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

