



**Makuyu v M'muketha & another (Suing as the Legal Representatives of the Estate of the Late Gladys Ruguru - Deceased) (Civil Application E017 of 2024) [2024] KECA 1041 (KLR) (26 April 2024) (Ruling)**

Neutral citation: [2024] KECA 1041 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPLICATION E017 OF 2024  
W KARANJA, LK KIMARU & AO MUCHELULE, JJA  
APRIL 26, 2024**

**BETWEEN**

**JENNIFER KARIMI MAKUYU ..... APPLICANT**

**AND**

**JOHN MWENDA M'MUKETHA ..... 1<sup>ST</sup> RESPONDENT**

**STEPHEN KAREMU M'MUKETHA ..... 2<sup>ND</sup> RESPONDENT**

**SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF THE LATE  
GLADYS RUGURU - DECEASED**

*(An application for striking out the notice of appeal against the Judgment of the Environment and Land Court of Kenya at Meru (Nzili, J.) dated and delivered on 17th January, 2024 in E.L.C. No. E009 of 2022 (OS))*

**RULING**

1. There is before us a notice of motion dated 20<sup>th</sup> February, 2024 by Jennifer Karimi Makuyu (the applicant) expressed to be premised on Rule 86 of the Court of Appeal Rules. She entreats the Court to strike out the notice of appeal dated 13<sup>th</sup> February, 2024 on the ground that the said notice of appeal was filed outside the 14 days prescribed under Rule 77 (2) of the Court of Appeal Rules.
2. The application is supported by an affidavit sworn by the applicant on even date in which she deposes that the impugned judgment was delivered on 17<sup>th</sup> January, 2024. As the notice of appeal should be filed within 14 days from the date of delivery of the judgment, the notice of appeal was filed way outside the said window; hence the application for striking it out.
3. The application is opposed through the affidavit in reply sworn by Stephen Karemu M'Muketha (the 2<sup>nd</sup> respondent) sworn on 15<sup>th</sup> April, 2024 on his behalf and on behalf of the 2<sup>nd</sup> respondent. The



respondents concede that the notice of appeal was filed 13 or 14 days late. Indeed, that being so, the story should end there. The respondent has, nonetheless, gone ahead to give reasons for the delay in filing the notice of appeal blaming his counsel for making a wrong endorsement in his diary pertaining to the date the judgment was delivered.

4. Both parties filed submissions in support of their rival positions and highlighted the submissions when the matter came for plenary hearing.
5. As pointed out to learned counsel for the respondent in Court, the reasons for the delay are of no relevance to the application at hand. Those should be reserved for an application for extension of time which should be made before a single Judge of the Court.
6. We need to remind learned counsel that filing a notice of appeal out of time is not a technicality that is curable under Article 159 2 (d) of the Constitution or Section 3A and 3B of the Appellate Jurisdiction Act. Time can only be enlarged in the manner provided for under the Court of Appeal Rules. This Court set the record straight in Ramji Devji Vekaria v Joseph Oyula CA (Civil Application No 154 of 2010) where it expressed itself as follows:  
  
“This is an omission that goes to the root of the Rules. i.e. whether or not a party can file an appeal out of time and without leave of the Court. To invoke provisions of section 3A and 3B would result in a serious precedent being set which will mean utter confusion in the court corridors as there will no longer be any reason for following the Rules of the Court, even when they have been violated with impunity.”
7. As the respondents concede that the notice of appeal was filed out of time, we do not need to belabour the issue.
8. This application has merit and we allow the same and strike out the notice of appeal dated 13<sup>th</sup> February, 2024 with costs to the applicant.

**DATED AND DELIVERED AT MERU THIS 26<sup>TH</sup> DAY OF APRIL, 2024.**

**W. KARANJA**

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**JUDGE OF APPEAL**

**L. KIMARU**

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**JUDGE OF APPEAL**

**A. O. MUCHELULE**

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**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

