



REPUBLIC OF KENYA



**Mbarathi v Gatherer (Civil Application E075 of 2021)  
[2024] KECA 646 (KLR) (7 June 2024) (Ruling)**

Neutral citation: [2024] KECA 646 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT MOMBASA  
CIVIL APPLICATION E075 OF 2021  
AK MURGOR, JA  
JUNE 7, 2024**

**BETWEEN**

**DANIEL SAMSON MBARATHI ..... APPLICANT**

**AND**

**MARGARET WANGARI GATHERER ..... RESPONDENT**

*(Being an application for correction/rectification of the ruling delivered on 8th March, 2024 brought under Rules 1(2) and 37 of the Court of Appeal Rules, 2022 Sections 1A and 1B of the Appellate Jurisdiction Act, Article 159(2) (d) of the Constitution and all other enabling provisions of the law)*

**RULING**

1. The applicant's Notice of Motion (undated) and filed on 11<sup>th</sup> March, 2024 seeks *inter alia*, that this Court be pleased to correct and rectify the ruling delivered on 8<sup>th</sup> March 2024 extending time to lodge the appeal to correct the date of the Notice of Motion seeking extension of time to read 22<sup>nd</sup> October, 2021 instead of 31<sup>st</sup> August, 2023 and (ii) specify timelines for filing of the Notice and Memorandum of appeal in place of the order that, "the Notice of appeal lodged on 31<sup>st</sup> August, 2023 be and is hereby deemed as properly filed and served on the respondent".
2. The applicant's motion is brought on grounds that, pursuant to the Notice of Motion dated 22<sup>nd</sup> October, 2021 that sought for extension of time to lodge the Notice of appeal against the judgment delivered on 31<sup>st</sup> August, 2021 in Originating Summons No. 8 of 2017, a ruling of this Court dated 8<sup>th</sup> March 2024 indicated the date of the motion as "31<sup>st</sup> August 2023" instead of the "22<sup>nd</sup> October, 2021", and also deemed a Notice of appeal lodged on 31<sup>st</sup> August 2023 as properly filed and served on the respondent; that the foregoing is clearly a clerical error on the part of the Court that has necessitated this application for correction.



3. When the application came up for hearing on a virtual platform, Ms. Ngugi learned counsel for the applicant and Mr. Mung'oma learned counsel for the respondent were in Court. Counsel for the applicant relied on their submissions in entirety. For his part, counsel for the respondent informed the Court that the application was unopposed.
4. The power of this Court to correct any errors of clerical or arithmetic nature in a ruling or judgment which have arisen from accidental slip or omission in a ruling is enshrined under rule 37 of the [Court of Appeal Rules, 2022](#) which provides:
  - (1) A clerical or arithmetical mistake in any judgment of the Court or any error arising therein from an accidental slip or omission may, at any time, whether before or after the judgment has been embodied in an order, be corrected by the Court, either of its own motion or on the application of any interested person so as to give effect to the intention of the Court when judgment was given.
  - (2) An order of the Court may be corrected by the Court at any time, either of its own motion or on the application of any interested person—
    - a. if it does not correspond with the judgment it purports to embody; or
    - b. where the judgment has been corrected under sub-rule (1), if it does not correspond with the judgment as so corrected.”
5. Indeed, in its ruling dated 8<sup>th</sup> March 2024 the date of the applicant’s motion for leave to extend time for filing and serving a Notice of appeal was erroneously captured as 31<sup>st</sup> August 2023 instead of 22<sup>nd</sup> October 2021 and further, the Court erroneously deemed as properly filed a Notice of appeal lodged on 31<sup>st</sup> August 2023. These are errors arising from an accidental slip and do not in anyway change the substance, and which warrant correction under [rule 37](#) of this Court’s rules.
6. In view of the above, the application for correction is allowed and I make the following orders:
  - i. the ruling of this Court delivered on the 8<sup>th</sup> March 2024, be and is hereby corrected to read the Notice of Motion dated 22<sup>nd</sup> October 2021 instead of 31<sup>st</sup> August 2023;
  - ii. the reference to the Notice of appeal lodged on 31<sup>st</sup> August, 2023 to be deemed as properly filed to be replaced with an order granting leave to the applicant to file and serve the Notice of appeal within 14 days from the date of delivery of this ruling; and
  - iii. The Memorandum and Record of appeal to be lodged and served in accordance with rule 84 of this [Court’s rules](#).
  - iv. Costs in the intended appeal.

It is so ordered.

**DATED AND DELIVERED AT MOMBASA THIS 7TH DAY OF JUNE, 2024**

**A. K. MURGOR**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed



**DEPUTY REGISTRAR**

