



Kamau v Athi Water Works Development Agency (Environment and Land Appeal E064 of 2021) [2024] KEELC 4366 (KLR) (23 May 2024) (Ruling)

Neutral citation: [2024] KEELC 4366 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E064 OF 2021**

MD MWANGI, J

MAY 23, 2024

BETWEEN

SAMUEL MACHARIA KAMAU APPELLANT

AND

ATHI WATER WORKS DEVELOPMENT AGENCY RESPONDENT

RULING

1. Though this matter is scheduled for judgment today, I have found it appropriate to instead make this brief ruling having found out that two critical steps were missed in this matter before fixing it for a judgment date. The steps are critical and I do not consider them mere procedural technicalities.
2. Under Order 42 rule 11 of the *Civil Procedure Rules*, upon filing an appeal, the Appellant is obligated to, within thirty (30) days (after filing the memorandum of appeal) cause the matter to be listed before the judge for directions under section 79B of the *Civil Procedure Act*.
3. Section 79B of the *Civil Procedure Act* requires that before an appeal from a subordinate court to the High Court is heard, a judge of the High Court peruses it and if he considers that there is no sufficient ground for interfering with the decree, part of the decree or order appealed against, notwithstanding Section 79C of the *Civil Procedure Act* to reject the appeal summarily.
4. However, where the judge does not reject the appeal summarily under Section 79B of the *Civil Procedure Act*, the Registrar is required to notify the Appellant of the admission of the appeal. It is at that juncture that the Appellant is then required to serve all the Respondents with the memorandum of appeal.
5. Directions under Order 42 rule 13 of the *Civil Procedure Rules* follow thereafter. The directions before the hearing (of the appeal) are to be given by a judge in chambers. Any objections to the jurisdiction of the appellate court shall be raised before the judge before he gives the directions under rule 13. The judge may give directions concerning the appeal generally and particularly directions as to the manner



in which the evidence and exhibits presented to the court below shall be put before the appellate court and as to the typing of any record or part thereof.

6. Before allowing the appeal to go for hearing the judge needs to be satisfied that the following documents are on the court record and that such of them as are not in possession of either party have been served on that party, i.e.
 - a. Memorandum of appeal;
 - b. The pleadings;
 - c. The notes of the trial magistrate made at the hearing;
 - d. The transcript of any official shorthand, typist notes, electronic recording or Palantypist notes made at the hearing;
 - e. All affidavits, maps, and other documents whatsoever put in evidence before the magistrate;
 - f. The judgment, order or decree appealed from, and where appropriate, the order (if any) giving leave to appeal.
7. In this case there is no evidence on record of the admission of the appeal nor the issuance of directions under Order 42 rule 13.
8. In my attempt to write a judgment in respect of this appeal, I was confronted with questions whose answers ought to have been provided at the time of directions under Order 42 rule 13.
9. The two critical two were missed as a result of an interlocutory application filed in this matter by the appellant. After its ruling the file was transferred from the first court where the ruling was delivered to this court.
10. Consequently and in order to enable the full compliance with the law and allow the court write the judgment in this appeal without unnecessary handicaps, the court vacates its earlier directions setting down this matter for judgment and in their place directs that the file be given a date for directions under Order 42 rule 13 for appropriate direction.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23RD DAY OF MAY, 2024.

M.D. MWANGI

JUDGE.

In the virtual presence of:

Mr. Kinyanjui for the Appellant

No appearance for the Respondent

Yvette: Court Assistant.

M.D. MWANGI

JUDGE.

