



David (Suing as the Legal Representative of the Estate of Patrick Mungathia Gichunge) v Gakuru & another (Environment and Land Appeal E008 of 2023) [2024] KEELC 5334 (KLR) (Environment and Land) (19 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5334 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND APPEAL E008 OF 2023
EK WABWOTO, J
JULY 19, 2024

BETWEEN

KARAMBU PURITY DAVID (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF PATRICK MUNGATHIA GICHUNGE) APPELLANT

AND

WILSON NJUGUNA GAKURU 1ST RESPONDENT

MARY NJERI 2ND RESPONDENT

RULING

1. The central issue in this ruling is whether this court lacks jurisdiction to hear and determine this appeal pursuant to the provisions of Section 79G of the *Civil Procedure Act*. The Respondents vide their Notice of Preliminary Objection dated 1st March 2024 May 2024 contends that this court lacks jurisdiction in view of the aforementioned provision. It was also contended that the Appeal herein was filed out of the statutory time of 30 days from the date of delivery of the decision before the subordinate court. It was further contended that the appeal was filed without leave of the court and hence the same ought to be struck out with costs.

2. Section 79G of the *Civil Procedure Act* provides:

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order: Provided that an appeal may be



admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time”.

3. The preliminary objection was canvassed through written submissions. The Respondents filed written submissions dated 20th May 2024 which the court has duly considered. Counsel for the Appellant chose not to file written submissions as earlier agreed.
4. In the instant appeal, the memorandum of appeal was lodged on 22nd December 2023. The judgment appealed against was rendered in Taveta PM MCELC No. 017 of 2021 on 20th April 2023, other rulings dated 10th August 2023, 23rd November 2023 together with orders issued by the Court dated 21st December 2023. It follows therefore that any appeal against any of the orders issued in Taveta PM MCELC No. 017 of 2021 had to be filed within thirty days from the date of rendering the said decisions. Going by the date of delivery according to the parties, the Memorandum of appeal had to be filed by 21st January 2024.
5. The Appellant herein never made any attempt to have the appeal admitted out of time. In the circumstances, the court cannot condemn the Respondents to respond to an appeal that has been filed in blatant disregard of the law and no attempt has been made to regularize the defect. The net result is that the court agrees with the Respondents that this appeal stands to be struck out on the ground that it was filed outside the stipulated time and without an order enlarging time for bringing the said appeal.
6. In the end, it is the finding of this court that the Respondents preliminary objection dated 1st March 2024 is merited and the entire appeal is hereby struck out with no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 19TH DAY OF JULY 2024.

E. K. WABWOTO

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JUDGE

In the presence of:-

Court Assistants: Mary Ngoira and Norah Chao.

N/A for the Appellant.

Mr. Njau for the Respondents.

