



**Mukundi v Mukundi (Environment and Land Appeal E036 of 2024)
[2024] KEELC 5846 (KLR) (22 August 2024) (Ruling)**

Neutral citation: [2024] KEELC 5846 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL E036 OF 2024**

**BM EBOSO, J
AUGUST 22, 2024**

BETWEEN

JOHN NDUNGU MUKUNDI APPLICANT

AND

DAVID WAINAINA MUKUNDI RESPONDENT

RULING

1. This appeal was instituted on 15/4/2024 *vide* an undated but signed memorandum of appeal. Indeed, the court record shows that the appellant paid the requisite court fees of Kshs 1,550 for filing the memorandum of appeal. In addition, the appellant paid Kshs 2,250 as the requisite court fees for filing the notice of motion and the certificate of urgency that accompanied the memorandum of appeal. The notice of motion is dated 11/4/2024 and is the subject of this ruling.
2. Through the notice of motion [the application], the appellant seeks two orders: (i) an order granting him leave to institute an appeal out of time against a decision rendered on 30/12/2009 by the now defunct Gatundu South Land Disputes Tribunal; and (ii) an order restraining the respondent and his agents against “causing havoc and trespassing the applicant’s pending the hearing of the appeal” [sic].
3. The application is premised on the grounds set out on the face of the motion and in the supporting affidavit sworn on 11/4/2024 by the applicant. The respondent opposed the application through a replying affidavit dated 29/4/2024.
4. The court has read and considered the application alongside the parties’ submissions. It is clear from the court record that the appellant has already instituted an incompetent appeal. Indeed, the application under consideration is mounted on the platform of the incompetent appeal. An application to this court seeking an order enlarging the time within which to lodge an appeal to this court is initiated through a notice of motion presented as a miscellaneous application. If the application is successful, the appeal is subsequently instituted as a stand-alone cause through a memorandum of appeal.



5. What the appellant has done is clearly an abuse of the process of the court. He has filed an incompetent appeal and he now seeks to sanitize it by obtaining an order enlarging time. He at the same time wants an injunction on the platform of the irregular and incompetent appeal. The law does not permit him to do that. Clearly, whereas the doors to the seat of justice are wide open, any litigant seeking to access the seat of justice is expected to abide by the law.
6. For the above reason, the notice of motion dated 11/4/2024 is struck out for having been anchored on an incompetent appeal. Also struck out is the incompetent appeal itself. For avoidance of doubt, the appellant/applicant will be at liberty to bring a stand-alone notice of motion to be filed as a miscellaneous application, if he so desires. The appellant/applicant will bear costs of the ill-fated appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 22ND DAY OF AUGUST 2024

B M EBOSO

JUDGE

In the Presence of: -

Ms. Omamo for the Respondent

No appearance for the Appellant

Court Assistant: Melita

