



**Muriithi v Mukoma (Environment & Land Case E037 of 2022)  
[2024] KEELC 7513 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 7513 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT & LAND CASE E037 OF 2022**

**JO OLOLA, J  
NOVEMBER 14, 2024**

**BETWEEN**

**PHERIS WANJIRA MURIITHI ..... APPELLANT**

**AND**

**JACINTA WANGECI MUKOMA ..... RESPONDENT**

**RULING**

1. I have before me for determination a Notice of Motion dated 8<sup>th</sup> March 2024. By the said Motion Jacinta Wangechi Mukoma (the Appellant) prays for orders that:
  1. The Honourable Court be pleased to strike out the Memorandum of Appeal dated 16<sup>th</sup> December 2022 and the Record of Appeal dated 13<sup>th</sup> February 2024;
  2. The Honourable Court do hereby strike out the Appellant’s Appeal; and
  3. That costs of the application and the Appeal be awarded to the Applicant.
2. The application is supported by an Affidavit sworn by the Applicant and is based on the grounds inter alia that:
  - i. The Appeal is incompetent, bad in law and fatally defective as it has been filed out of time and without the leave of this Honourable Court;
  - ii. The Memorandum of Appeal was filed 10 days after the expiry of the 30 days required by Section 79G of the *Civil Procedure Act* and without leave of the court;
  - iii. The Record of Appeal dated 13/2/2024 was filed 463 days after the Judgment was delivered on 7<sup>th</sup> November 2022 and the Appellant has not explained the delay;
  - iv. The Memorandum of Appeal refers to a Judgment delivered by the court on 29/11/2022 which Judgment is non-existent.



3. Pheris Wanjira Muriithi (the Respondent) is opposed to the application. In her Replying Affidavit sworn on 2<sup>nd</sup> May 2024, the Respondent avers that the application is an afterthought, mischievous, misconceived, bad in law and a gross abuse of the court process.
4. The Respondent avers that the trial magistrate was transferred before Judgment could be delivered herein and that on 27<sup>th</sup> July 2022 the matter was placed before the Honourable J. Macharia SPM who made an order that the file be sent to the trial magistrate for preparation of Judgment.
5. The Respondent further avers that on 29<sup>th</sup> November 2022 a Judgment dated at Nairobi on 7<sup>th</sup> November 2022 was delivered and that being dissatisfied therewith, she filed a Memorandum of Appeal against the same on 16<sup>th</sup> December 2022 and served the same upon the Applicant on the same date.
6. The Respondent avers further that after the delivery of the Judgment, it was the Applicant who extracted a decree dated 16<sup>th</sup> January 2023 in which the Applicant erroneously indicated the date of the Judgment as 7<sup>th</sup> November 2022.
7. I have carefully perused and considered the application as well as the responses thereto. I have similarly perused and considered the submissions placed before the court by the Learned Advocates representing the parties.
8. By the application before the court, the Applicant urges the court to strike out the Memorandum of Appeal herein dated 16<sup>th</sup> December 2022 and the Record of Appeal dated 13<sup>th</sup> February 2024. It is the Applicant's case that the Appeal as filed is incompetent, bad in law and fatally defective as it has been filed out of time without the leave of the court.
9. The law governing the filing of Appeals from the subordinate courts to this court is found in Section 79 G of the [Civil Procedure Act](#) which provides as follows:-

“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.”
10. I have perused the record herein and of the proceedings before the trial court and I was left with no doubt that as stated in the Appellant's Replying Affidavit, the application before the court is misconceived and a gross abuse of the court process.
11. From the material placed before the court, it was apparent that the trial proceeded before the Honourable Nelly Kariuki, PM. Before Judgment could be delivered, the Honourable Magistrate was transferred. On 27<sup>th</sup> July 2022, the parties appeared before Honourable J. Macharia, SPM who directed that the file be transmitted to the Honourable Nelly Kariuki in her new station in Nairobi for preparation of Judgment.
12. As it turned out, the Honourable Principal Magistrate prepared a Judgment which was dated and signed at Nairobi on 7<sup>th</sup> November 2022. This is the date the Applicant claims the Judgment was delivered and hence her contention that the Memorandum of Appeal filed on 16<sup>th</sup> December 2022 was filed outside the 30 days period.



13. That submission clearly arises from a misconception of the facts herein. From a perusal of the proceedings in the Lower Court, the Judgment though dated and signed by the trial court in Nairobi on 7<sup>th</sup> November 2022 was not delivered on that day. Instead, it was again transmitted to the Honourable J. Macharia, SPM at Nyeri who delivered the same on 29<sup>th</sup> November 2022.
14. In computing time for the Appeal to be filed, the Appellant could not be expected to have known that the trial court had dated the Judgment in Nairobi on 7<sup>th</sup> November 2022. It was only upon delivery of the Judgment on 29<sup>th</sup> November 2022 that the same was brought to the attention of the parties by the court. That then was the correct date of the decree from which time could run against the Appellant.
15. Having filed the Memorandum of Appeal some 18 days later, the Appeal cannot by any form of measurement be said to have been filed outside the 30 days provided under Section 79G of the *Civil Procedure Act*.
16. It follows that the Motion dated 8<sup>th</sup> March 2024 is unfounded and without any basis. I dismiss the same with costs to the Appellant.

**DATED, SIGNED AND DELIVERED AT NYERI THIS THURSDAY 14<sup>TH</sup> DAY OF NOVEMBER, 2024.**

In the presence of:

No appearance for the Applicant.

Mr. Lundi holding brief for Thige for the Respondent.

Court Assistant: Kendi

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**J. O. OLOLA**

**JUDGE**

