



**Timas General Supplies v Quickfill Limited (Land Case Appeal
E055 of 2024) [2024] KEELC 7501 (KLR) (13 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 7501 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
LAND CASE APPEAL E055 OF 2024**

JA MOGENI, J

NOVEMBER 13, 2024

BETWEEN

TIMAS GENERAL SUPPLIES APPELLANT

AND

QUICKFILL LIMITED RESPONDENT

RULING

1. This ruling is in respect of a Notice of preliminary objection by the defendant dated 11/05/2024 on the grounds that;
 - i. The Appeal is incompetent, bad in law and fatally defective for it has been filed out of time and without leave of the honourable court.
 - ii. The appeal was filed on the 28th April 2024 over ten months after the Ruling was delivered on the 26th May 2023.
 - iii. It is an abuse of the court process and the same ought to be struck out with costs to the Respondent
2. The memorandum of appeal in this appeal is dated 24/04/2024 and filed on 28/04/2024. The ruling appealed against was rendered in Milimani Commercial Division at Nairobi in MCCMISC No. E577 of 2022 on 19/05/2023. On 11/05/2024, the defendant/Applicant brought a notice of preliminary objection, urging the court to strike out the appeal on the grounds enumerated above.
3. The preliminary objection was canvassed through written submissions where the respondent/applicant's submissions are dated 6/7/2024. The appellant/respondent filed written submissions dated 16/07/2024. I have considered the rival submissions. One of the substantive and specific grounds upon which the respondent seeks an order striking out the appeal is that it was filed out of time and without leave of the court. The response which counsel for the appellant gave in the appellant's written



submissions is that the appellant's delay was caused by the fact that the appellant was not supplied on time by the court with the court proceedings. That the appellant filed on 21/07/2023 a Notice of Appeal and when the records became available he filed the record on 24/04/2023.

4. That therefore the appellant contends that the mistake cannot be wholly blamed on him but should be blamed on the court for delaying in providing the record.
5. From my reading of Section 79 of the Civil Procedure Act, I do not think this is a serious response to a defect that flies in the face of a mandatory requirement of the law. Section 79G of the Civil Procedure Act provides as follows:-

“79G. 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 [Rev. 2012] CAP. 21 Civil Procedure 35 [Issue 1] 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.”

6. I have noted that there was no attempt made to have the appeal admitted out of time. In the circumstances, the court cannot condemn the respondent/applicant 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 respondent/applicant that this appeal stands to be struck out on the ground that it was filed more than ten months or thereabout outside side the stipulated time and without an order enlarging time for bringing the appeal.
7. Given the foregoing, I find that the net result is that the appeal herein is struck out for having been filed out of time and without an order enlarging the time for filing the appeal. The appellant shall bear costs of the preliminary objection.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 13TH DAY OF NOVEMBER 2024

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MOGENI J

JUDGE

In the virtual presence of:-

Mr. Odegi for Respondent

Mr. Esani holding brief for Mr. Nyamu for Applicant

Caroline Sagina - Court Assistant

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MOGENI J

JUDGE

