



REPUBLIC OF KENYA



**Wangui & another v Kaberia (Civil Appeal E102 of 2023)  
[2025] KEHC 7588 (KLR) (27 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7588 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CIVIL APPEAL E102 OF 2023  
CW GITHUA, J  
MAY 27, 2025**

**BETWEEN**

**PETER KIRIMI WANGUI ..... 1<sup>ST</sup> APPELLANT**

**SAMUEL KABATHA C/O NYENA SACCO ..... 2<sup>ND</sup> APPELLANT**

**AND**

**GAKII JUDY KABERIA ..... RESPONDENT**

**RULING**

1. This ruling is in respect of the respondent's Notice of Motion dated 27<sup>th</sup> February 2024 seeking that the appellant's Memorandum of Appeal dated 19<sup>th</sup> December 2023 and filed on 20<sup>th</sup> December 2023 be struck out for having been filed out of time without leave of the court. The Respondent (applicant) also sought for costs of the application.
2. The record shows that the application was duly served on the appellants whose advocates attended the court on several occasions seeking to be given leave to file a response to the application demonstrating that they had sought and obtained leave of the court to file the appeal out of time. However, despite being given a period of over six months to file their said response, the appellant's counsel on record failed to file any response as promised.
3. It is also worth noting that on 1<sup>st</sup> October 2024, in the presence of both parties, despite spirited objection by the applicant, the court gave directions for disposal of the application by way of written submissions and gave the appellants another opportunity to file and serve their response. The submissions were supposed to be filed on or before 6<sup>th</sup> November 2024. When the matter came up for mention on 6<sup>th</sup> November 2024, none of the parties had filed their submissions. The appellants had also not filed any response to the application. It is therefore safe to conclude that to date, the application stands unopposed.



4. It is trite that under Section 79 G of the *Civil Procedure Act*, (CPA), appeals from subordinate courts to the High Court ought to be filed within 30 days of the date the impugned decision was made. The Proviso to Section 79 G of the *Civil Procedure Act* (CPA) however gives an aggrieved party who for sufficient cause failed to file his intended appeal within time an opportunity to ventilate his grievances on appeal by applying to the High Court for leave to file his intended appeal out of time.
5. In this case, it is clear from the material placed before this court including the Memorandum of Appeal itself that the judgement sought to be challenged on appeal was delivered on 23<sup>rd</sup> November 2022. As stated earlier, the Memorandum of Appeal was filed way beyond the time of 30 days limited by the law. Although the appellants had orally claimed in court through their learned Counsel that they had obtained leave to file the appeal out of time, they failed to file a response to avail evidence to substantiate that claim.
6. Given the foregoing, the only conclusion that this court can make is that the appeal was filed out of time without leave of the court.
7. There is a long line of authorities from this court all the way to the Supreme Court which have held that an appeal filed out of time without leave of the court is incompetent and fails to invoke the jurisdiction of the appellate court.

The Supreme Court in *Nicholas Kiptoo Arap Korir Salat V Independent and Boundaries Commission & 7 others* [2014] eKLR went further to add that the purported appeal is merely a document which has no legal consequence. The Supreme Court expressed itself as follows;

“..... To file an appeal out of time and seek the court to extend time is presumptive and inappropriate. No appeal can be filed out of time without leave of the court. Such a filing renders the “document” so filed a nullity and of no legal consequence.....”.

8. For the above reasons, I find merit in the respondent’s application and it is hereby allowed. I am satisfied that the appellants appeal is incompetent and cannot be sustained. The appeal is hereby struck out with costs to the respondent.

**DATED, SIGNED AND DELIVERED AT MURANGA THIS 27<sup>TH</sup> MAY 2025.**

**HON. C. W. GITHUA**

**JUDGE**

In the Presence of:

Ms. Msafiri for the Respondent

Ms. Susan Waiganjo, Court Assistant

No appearance for the Appellants

