



REPUBLIC OF KENYA



KENYA LAW
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**Denko Properties Limited v Amlani & another (Civil Appeal
E044 of 2024) [2025] KEHC 9081 (KLR) (26 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9081 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS**

CIVIL APPEAL E044 OF 2024

EN MAINA, J

JUNE 26, 2025

BETWEEN

DENKO PROPERTIES LIMITED APPELLANT

AND

SACHIN KUMAR MAHESH AMLANI 1ST RESPONDENT

DEVAN MAHESHKUMAR AMLANI 2ND RESPONDENT

RULING

1. This appeal arises from the judgment of the Small Claims Court delivered on 26th January 2024. The subject matter of the Plaintiff/Appellant's suit against the Defendants/Respondent was breach of contract.
2. Admittedly, this appeal was filed on 26th February 2024. However, by a Notice of Preliminary Objection dated 27th June 2024 the Respondents have challenged the competency of the appeal. The gravamen of their objection being that the appeal was filed outside the period prescribed by Section 79G of the *Civil Procedure Act*; that it was filed out of time without leave and is therefore bad in law, void abinitio, incompetent and incurably defective and it ought to be struck out with costs. Reliance was placed on the following cases:-Mukisa Biscuits Manufacturing Co.Limited v West End Distributors Limited (1969) EA 696.John Njuguna Kimunya v Teresiah Wachuka Kimunya & Another [2016] EKLR.Avtar Singh Bhamra & Another v Oriental Commercial Bank Kisumu – HCCC No.53 of 2004.Orako v Mbeja [2005] IKLR 141.Section 79G of the Civil Procedure RulesNicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others [2014] eKLR.George Kamau Kimani & 5 Others v County Government of Trans Nzoia [2014] eKLR.Tana Teachers Co-operative & Credit Society Limited v Andriano Muchiri [2018] eKLR.Mureithi Charles & Another v Jacob Atina Nyangesuka [2022] eKLR.Onjula Enterprises limited v Sumaria [1986] KLR 651.Haile Selassie Avenue Development Co. Limited v Joseph Muriithi & 10 Others [2004] eKLR.



3. On his part, the Appellant argues that the preliminary objection is not merited. She contends that the appeal was filed on 23rd February 2024 as evidenced by the receipt and rubber stamp of the court and urges this court to find that the appeal was filed within the period prescribed in Section 79G of the *Civil Procedure Act* and hence dismiss this preliminary objection with costs to the Appellant. It is the Appellant's case that the only reason the appeal could have been stamped on 26th February 2024 is because that was the next working day.
4. The issue for determination is whether this appeal was filed out of time without leave hence rendering it incompetent and fatally defective as alleged.
5. I have carefully considered the preliminary objection, the submissions of learned Counsel for both sides, the cases cited and the law.
6. Generally the filing of civil appeals in the High Court from decisions of the courts below is prescribed in Section 79 G of the *Civil Procedure Act* and Order 42 of the Civil Procedure Rules which provide that every appeal must be filed within thirty days from the date of the decree or order appealed from but the time which the lower court may certify as having been requisite for the preparation and delivery of a copy off the decree or order is to be excluded. Whereas the *Small Claims Court Act* is a complete code with its own rules of procedure. Section 38(1) of the Act merely provides that a person aggrieved by the decision or an order of the court may appeal against that decision or order to the High Court on matters of law. It does not however specify the procedure for so doing or the period within which such appeals ought to be filed hence we must resort to the *Civil Procedure Act* and Rules.
7. As noted from Section 79G of the *Civil Procedure Act* the thirty days prescribed for filing the appeal is from the date of the decree or order appealed against. It is trite that a judgment and a decree are distinct. Section 25 of the *Civil Procedure Act* draws the distinction as follows:

“The court, after the case has been heard, shall pronounce judgment and on such judgment a decree shall follow....”
8. Order 42 Rule 2 of the Civil Procedure Rules provides that a certified copy of the decree, not judgment, be filed together with the Memorandum of Appeal.
9. From the record the decree in this case is dated 26th January 2024 and issued on 5th March 2025. The date of the decree is therefore 26th January 2024. The Appeal should therefore have been filed thirty days from 26th January 2024 so as to comply with Section 79G of *Civil Procedure Act*.
10. The record of this court indicates that the appeal was filed on 23rd February 2024 at 18:56:00. This is the date on the electronic receipt. However, as that day was a Friday and the money for filing was received after close of business the Appeal was stamped on 26th February 2024 which was the next working day. So was the appeal filed within or out of time?
11. The computation of time for matters falling under the Civil Procedure Rules is guided by Order 50 of the Civil Procedure Rules. Order 50 Rules 3 and 8 are what would be relevant in this case given that they provide for computation of time, when the time for doing any act or taking any proceeding expires on Sunday or on a day offices are closed and also the manner in which computation of days is done. The two rules provide as follows:-

“Order 50 Rule 3

[3.] Time expiring on Sunday or day offices closed [Order 50, rule 3]



Where the time for doing any act or taking any proceeding expires on a Sunday or other day on which the offices are closed, and by reason thereof, such act or proceeding cannot be done, or taken on that day, such act or proceeding shall so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.

Computation of days [Order 50, rule 8]

[8] In any case in which any particular number of days not expressed to be clear days is prescribed under these Rules or by an order or direction of the court, the same shall be reckoned exclusively of the first day and inclusively of the last day.

.....”

12. Counting the days in this case the date of the decree being 26th January 2024 time started to run on 27th January 2024 as according to Order 50 Rule 8 of the Civil Procedure Rules the 26th January 2024 is to be excluded. A simple calculation of the days shows that thirty days expired on 25th February 2024. That day happened to be a Sunday and so according to Order 50 Rule 3 that day has to be excluded and the appeal could only have been filed on the next working day which was on Monday 26th February 2024 which according to Rule 8 was inclusive. The Appeal having been filed on 26th February 2024, it was filed within the prescribed period of thirty days and no leave was required. Whereas Counsel for the Respondents alleges that the judgment is dated on 24th January 2024 it is in fact dated 26th January 2024 which is also the date of the decree.

13. My finding is also fortified by the provisions of Section 57(a) of the [Interpretation and General Provisions Act](#) which states:

“57. Computation of time

In computing time for the purposes of a written law, unless the contrary intention appears—

a. a period of days from the happening of an event or the doing of an act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;

.....”

14. The upshot is that the preliminary objection is devoid of merit and it is dismissed with costs to the Appellant.

It is so ordered.

RULING SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 26TH DAY OF JUNE, 2025.

E. N. MAINA

JUDGE

In the presence of:

Mr. Ochieng for the Respondent

Ms Nzilani for Nganga for the Appellant

Geoffrey - Court Assistant

