



Kenya Power and Lighting Company Ltd v Kaburia (Suing on behalf of the Estate of the Late Dennis Njeru Kaari) (Civil Appeal E435 of 2024) [2025] KEHC 9237 (KLR) (Civ) (26 June 2025) (Ruling)

Neutral citation: [2025] KEHC 9237 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E435 OF 2024

JN MULWA, J

JUNE 26, 2025

BETWEEN

KENYA POWER AND LIGHTING COMPANY LTD APPELLANT

AND

JUDITH MUTHONI KABURIA (SUING ON BEHALF OF THE ESTATE OF THE LATE DENNIS NJERU KAARI) RESPONDENT

RULING

1. Before the court for determination is the Respondent's application dated 2/05/2024 wherein she seeks orders for striking out the Memorandum of Appeal dated 28/03/2024 for being incompetent, time barred and an abuse of court process.
2. It is premised on grounds found on its face, and supporting affidavit of Henry Karauka Advocate for the Applicant sworn on 2/05/2024. No legal provisions are cited upon which the application is grounded.
3. The Applicant premises the motion on grounds that despite the court granting leave to the appellant to file the appeal out of time, the Appellant failed to comply with terms attached to the grant of leave and as such the appeal stands as incompetent, and ought to be struck out.
The applicant filed submissions dated 14/10/2024 to buttress its motion.
4. The Applicant/Respondent filed a replying affidavit sworn by one Justus Omagwa in opposition of the application and further filed submissions on the same dated 10/02/2025.
5. The court has considered the parties affidavits and submissions. It is mutually agreed by both parties that vide a Miscl. Civil Application No. E203 of 2024. On 15/03/2024, the court (Majanja J) granted



leave to the appellant to file the appeal out of time upon conditions that the appellant was to pay to the Respondent a sum of Kshs. 1 million plus costs assessed at Kshs. 10,000/= within 21 days which was duly paid in two instalments of Kshs. 510,000/= and Kshs. 500,000/= respectfully though the 2nd instalment was delayed but eventually paid.

6. Considering the above, would the appeal be deemed to be incompetently filed?

The orders of Majanja J were granted on 15/03/2024 and the appeal by a Memorandum of Appeal dated 28/03/2024 was filed on an even date as seen from the CTS platform, within the stipulated 14 days.

7. In the court's view therefore, the first arm of the court's orders on filing the appeal were strictly complied with by filing the Memorandum of Appeal.

8. On the matter of the orders of stay of execution, being the second arm of the motion dated 13/03/2024, was substantively complied with by payment to the Applicant the full sum of Kshs. 1,000,000/= and the deposit in court of Kshs. 500,000/= though not within the 21 days but soon thereafter as seen at the CTS which period in the courts view was not inordinately late.

9. It is therefore not true as submitted by the Applicant that Kshs. 500,000/= was never deposited in court as security.

Section 3A of the Civil Procedure Act grants the court inherent powers and discretion to make orders as may be necessary for the ends of justice or to prevent abuse of court process. Further Article 159 2(d) of the Constitution mandates courts to dispense justice without undue reliance on procedural technicalities.

10. For the foregoing, the court finds no merit in the applicant's application dated 2/05/2024. It is dismissed with costs.

The appeal shall be mentioned for directions before the DR at the Civil Appellate Division on the 28/07/2025.

Orders accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 26TH DAY OF JUNE, 2025

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JANET MULWA.

JUDGE

