



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Munyeti v Bunde (Civil Appeal E015 of 2023)
[2024] KEHC 2777 (KLR) (15 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2777 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CIVIL APPEAL E015 OF 2023**

KW KIARIE, J

MARCH 15, 2024

BETWEEN

VALERIE MADENYA MUNYETI APPELLANT

AND

JACK OMONDI BUNDE RESPONDENT

RULING

1. Jack Omondi Bunde, respondent herein, raised a preliminary objection dated the 8th day of December 2023 premised on the following grounds:
 - a. That the interlocutory appeal as filed offends the provisions of section 75 of the [Civil Procedure Act](#) and Order 43(1)(2) and (1)(3) of the Civil Procedure Rules in as far as the appeal is against the order of 18/1/2023 setting the matter for formal proof hearing which does not fall under order 43(1)(i) of the Civil Procedure Rules.
 - b. That this court has no jurisdiction to hear and determine the appeal as filed herein.
 - c. That leave to file the appeal herein was a prerequisite to the assumption of jurisdiction by this court on this appeal.
 - d. That without leave, this court is deprived of jurisdiction to hear and determine the appeal as filed.
2. On February 22, 2022, Ms. Wangui, the respondent, requested 14 days to file submissions. As of March 8, 2024, the appellant had not filed a response or submissions regarding the preliminary objection.
3. Section 75 of the [Civil Procedure Act](#) provides:



- (1) An appeal shall lie as of right from the following orders, and shall also lie from any other order with the leave of the court making such order or of the court to which an appeal would lie if leave were granted—
 - (a) an order superseding an arbitration where the award has not been completed within the period allowed by the court;
 - (b) an order on an award stated in the form of a special case;
 - (c) an order modifying or correcting an award;
 - (d) an order staying or refusing to stay a suit where there is an agreement to refer to arbitration;
 - (e) an order filing or refusing to file an award in an arbitration without the intervention of the court;
 - (f) an order under section 64;
 - (g) an order under any of the provisions of this Act imposing a fine or directing the arrest or detention in prison of any person except where the arrest or detention is in execution of a decree;
 - (h) any order made under rules from which an appeal is expressly allowed by rules.
- (2) No appeal shall lie from any order passed in appeal under this section.
4. On the other hand, Order 43(1)(2) and (1)(3) of the Civil Procedure Rules amplify section 75 of the Act. I have not been persuaded that the appellant required leave to appeal.
5. It was argued that the memorandum of appeal was filed 73 days after the decision's date. No explanation for the delay was tendered. I, therefore, find that the appeal is improperly before the court. The same is struck out with costs for want of jurisdiction.

DELIVERED AND SIGNED AT HOMA BAY THIS 15TH DAY OF MARCH 2024.

KIARIE WAWERU KIARIE

JUDGE

