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Jan 30 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

Scott F. Talley, Special Referee

Court of Appeals Appellate Case No. 2025-001073

Angelica Shelest,.....Respondent,

v.

Martin Maina Gitau and Mark One Freight & Logistics, LLC,.....Appellants.

RESPONDENT’S MOTION TO STRIKE ARGUMENTS I.a. AND I.b. OF THE INITIAL BRIEF OF APPELLANTS AS VIOLATING AN ORDER OF THE COURT, AND TO STAY DEADLINES UNTIL THE COURT RULES ON THE MOTION

Pursuant to Rule 240, SCACR, Respondent Angelica Shelest moves the Court to strike Arguments I.a. and I.b. of the Initial Brief of Appellants because the arguments violate this Court’s prior order denying Appellants’ motion for limited remand. Respondent also requests the Court stay the deadlines for filing Respondent’s initial brief and designation of matter for the record on appeal until it rules on the motion to strike. Rule 240, SCACR.

BACKGROUND AND ARGUMENT

This appeal arises out of an Order of Judgment entered by a Special Referee. On May 30, 2025, Appellants filed a Notice of Appeal from the Order denying their motion to set aside the Judgment. (Not.).

On July 22, 2025, Appellants filed a notice of appearance for new appellate counsel. Simultaneously, Appellants filed a motion to certify and transfer the case to the Supreme Court.

Appellants' motion to certify centered on its argument that the Special Referee acted without authority. (Mot. to Certify). However, Appellants had not raised that issue in the Circuit Court and there was no ruling on it for an appellate court to review. *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) (“It is axiomatic that an issue cannot be raised for the first time on appeal.” (internal quotation marks omitted)). The seasoned appellate counsel told the Supreme Court that Appellants “made a motion in the circuit court regarding the default but **did not raise** these jurisdictional/clerk and court powers issues.” (Mot. to Certify p. 2 n.1) (emphasis added). Recognizing that they could not raise an unpreserved issue, Appellants told the Supreme Court that, if it granted the motion to certify, they would move for a limited remand to the circuit court to raised those unpreserved issues. *Id.*

The parties briefed the motion to certify and, on October 21, 2025, the Supreme Court denied the motion.

On October 22, 2025, Appellants filed in this Court a motion for a limited remand to the Circuit Court to make a second Rule 60(b), SCRCR, motion to raise the unpreserved arguments. Respondent opposed the motion arguing, *inter alia*, that the arguments were untimely and unpreserved, the Order of Reference is the unappealed law of the case that cannot be challenged,¹ and Appellants consented to the Special Referee's authority. (Resp. in Opp. to Mot.).

On December 30, 2025, this Court entered an Order denying the motion for limited remand. (Order). The Court ordered Appellants to file a brief within 10 days and did not give leave to include the unpreserved issues. (Order).

¹ When Appellants filed this appeal, they did not include the Order of Reference in the Notice of Appeal. *See* Rule 203(d)(1)(B)(ii), SCACR (stating an appellant “shall” file with the notice of appeal a “copy of the order(s) and judgment(s) to be challenged on appeal if they have been reduced to writing”).

On January 9, 2026, Appellants filed an Initial Brief that includes the unpreserved arguments that they asked this Court to allow them to make on a limited remand. The inclusion of those arguments violates this Court’s order denying the motion for a limited remand.²

There was no point making the motion for limited remand if Appellants could make the unpreserved arguments without a remand. Appellants spent seven months of time while this case is pending on appeal seeking permission to raise its Arguments I.a. and I.b. in the Circuit Court so that the issues would be preserved for appeal. When the Court denied that permission, Appellants ignored the Court’s order and made the arguments anyway. It was a waste of the Supreme Court, this Court, and Respondent’s counsel’s time and resources to file a motion if Appellants were simply going to disregard the ruling.

“It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.” *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998).

Appellants’ brief does not address how Arguments I.a. and I.b. are preserved. Appellants know that Respondent argued to the Supreme Court and this Court that those issues are unpreserved and untimely, yet they do not address issue preservation.

To the extent Appellants argue that Respondent may raise issue preservation in his brief, that argument is disingenuous. If the arguments remain in Appellants’ brief, then Respondent will be forced to go to the time and expense of addressing the merits of those unpreserved arguments. Respondent has already been delayed for seven months by Appellants’ motions.

CONCLUSION

Appellants already stated that Arguments I.a. and I.b. are not preserved because they were not raised to the Circuit Court. (Mot. to Certify p. 2 n.1). Appellants asked this Court’s

² Respondent reserves the right to file a motion for sanctions.

permission for a limited remand to raise those arguments. This Court denied that permission. Therefore, Appellants' argument of those issues violates this Court's order.

For these reasons, the Court should stay the deadlines for filing Respondent's initial brief and designation of matter for the record on appeal until it rules on the motion to strike and issue an order granting the Motion to Strike Arguments I.a. and I.b. of Appellants' brief.

Respectfully submitted,

January 30, 2026

Brian T. Smith, SC Bar # 70232
714 Pettigru Street
Greenville, SC 29601
Telephone: 864-239-2007
bsmith@btsmithlaw.com

Attorneys for Respondent

s/Kathleen C. Barnes
Kathleen C. Barnes, SC Bar # 78854
William F. Barnes, III, SC Bar # 78220
BARNES LAW FIRM, LLC
P.O. Box 897
Hampton, SC 29924
Phone: 803-943-4529
kbarnes@barneslawfirmssc.com
wbarnes@barneslawfirmssc.com

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Angelica Shelest,.....Respondent,

v.

Martin Maina Gitau and Mark One Freight & Logistics, LLC,.....Appellants.

PROOF OF SERVICE

The undersigned certifies that a copy of the *Respondent’s Motion to Strike and to Stay Deadlines* has been served upon counsel for Appellants via electronic mail at the email addresses stated in the Attorney Information System as set forth below on January 30, 2026.

Clawson & Staubes, LLC
Jeanmarie Tankersley
jtankersley@cslaw.com
Madalyn Dalton
mdalton@cslaw.com

Nelson Mullins Riley & Scarborough, LLP
C. Mitchell Brown
mitch.brown@nelsonmullins.com
Brook B. Andrews
brook.andrews@nelsonmullins.com

January 30, 2026

s/Kathleen C. Barnes
Kathleen Chewing Barnes, SC Bar No. 78854
Barnes Law Firm, LLC
P.O. Box 897
Hampton, SC 29924
803-943-4529

Kathleen C. Barnes
kbarnes@barneslawfirmssc.com



William F. Barnes III
wbarnes@barneslawfirmssc.com

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Via Email
U.S. Mail (letter and filing fee only)

The Honorable Jenny Abbott Kitchings
Clerk of Court for the Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211
ctappfilings@sccourts.org

Re: *Angelica Shelest v. Martin Maina Gitau and Mark One Freight & Logistics, LLC*
Court of Appeals Appellate Case No. 2025-001073
Respondent's Motion to Strike and Stay filing deadlines

Dear Mrs. Kitchings:

Enclosed for electronic filing and service is the following:

1. Respondent's Motion to Strike and to Stay Filing Deadlines
2. Proof of Service

By electronic copy of this letter, I am serving counsel of record as stated below. The \$50.00 motion filing fee will be sent within 5 days of this electronic filing.

Sincerely,

s/Kathleen C. Barnes

Enclosures

cc: C. Mitchell Brown (mitch.brown@nelsonmullins.com)
Brook B. Andrews (brook.andrews@nelsonmullins.com)
Jeanmarie Tankersley (jtankersley@cslaw.com)
Madalyn Alissa Dalton (mdalton@cslaw.com)
William F. Barnes, III (wbarnes@barneslawfirmssc.com)
Brian T. Smith (bsmith@btsmithlaw.com)