



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

MISC. APPLICATION NO. 76 OF 2011 (JR)

IN THE MATTER OF LEAVE TO APPLY FOR ORDERS OF PROHIBITION AND MANDAMUS

AND

IN THE MATTER OF THE ALCOHOLIC DRINKS CONTROL ACT 2010

AND

IN THE MATTER OF MANUFACTURE AND DISTRIBUTION OF ALCOHOLIC DRINKS

AND

IN THE MATTER OF LICENSING UNDER THE ALCOHOLIC DRINKS CONTROL ACT 2010

AND

IN THE MATTER OF PACKAGING OF ALCOHOLIC DRINKS

REPUBLIC..... APPLICANT

V E R S U S

THE DC MBEERE NORTH DISTRICT.....1ST RESPONDENT

THE DC MBEERE SOUTH DISTRICT.....2ND RESPONDENT

THE DC MASINGA DISTRICT.....3RD RESPONDENT

THE DC YATTA DISTRICT.....4TH RESPONDENT

THE DC EMBU EAST DISTRICT.....5TH RESPONDENT

THE DC EMBU WEST DISTRICT.....6TH RESPONDENT

THE DC EMBU NORTH DISTRICT.....7TH RESPONDENT

THE COMMISSIONER OF POLICE.....8TH RESPONDENT

AND

DANGAI HERBAL LIMITED.....RESPONDENT/EXPARTE APPLICANT

NATIONAL AGENCY FOR THE CAMPAIGN

AGAINST DRUG ABUSE (NACADA).....APPLICANT/INTERESTED PARTY

R U L I N G

1. This is a ruling on the notice of motion dated 15/08/2016 seeking to strike out with costs the applicant's notice of appeal filed on 23/07/2013 with costs.
2. The affidavit of the applicant Beatrice Nduta supports the application. It states that the respondents filed their grounds of opposition in this application on 12/11/2011. It is deposed that the ruling on this Judicial Review matter was delivered on 9/07/2013 dismissing the JR application with costs.
3. The exparte applicant who felt aggrieved filed this notice of appeal on 9/07/2013 but has never taken any action for close to three years in prosecuting his appeal. It was argued that the existence of the notice of appeal continues to cause anxiety on the applicant. It is right and fitting that the said notice of appeal be struck out.
4. Mr. Okwaro for the exparte applicant opposed the application orally. He argued that the Court of Appeal Rules stipulate that a notice of appeal should be struck out within 30 days. The applicant has not complied with the time-lines provided for.
5. It was further argued that the notice was filed under Rule 75 of the Court of Appeal rules which defines the "court" as the Court of Appeal. As such it is only the Court of Appeal that can strike out the notice of appeal but not the High Court.
6. The issues arising from the application are:-
 - (a) *Whether this court has jurisdiction to strike out the notice.*
 - (b) *Whether this application is merited.*
7. This application is brought under Section 84 of the Court of Appeal Rules which provides:-

A person affected by an appeal may at any time, either before or after the institution of the appeal, apply to the Court to strike out the notice or the appeal, as the case may be, on the ground that no appeal lies or that some essential step in the proceedings has not been taken or has not been taken within the prescribed time.

Provided that an application to strike out a notice of appeal or an appeal shall not be brought after the expiry of thirty days from the date of service of the notice of appeal or record of appeal as the case may be.
8. The rule governs notices of appeal filed in the Court of Appeal. The notice of appeal filed in this case was filed in the wrong court and ought to have been filed in the Court of Appeal. The document is therefore incompetent and has no legal force or value.
9. On the question of jurisdiction, I find that this court is seized of all matters where the jurisdiction is conferred by the Constitution and statute. This court heard and determined the Judicial Review proceedings in which it had jurisdiction. If a document is filed in a case in which the court has jurisdiction, it is possessed of the jurisdiction to strike out such a document or to deal with applications or other matters within the case.
10. In the present case, this court has power to strike out the notice of appeal filed on 23/07/2013 should it be found to be incompetent. It is common sense that this court cannot call upon the Court of Appeal strike out document filed in the High Court. It is the court's duty to put its house in order within the powers conferred upon it by the law. I find this court has jurisdiction to hear and determine this application.
11. The respondent argued that the notice do appeal should be struck out within 30 days and as such, the time to strike out the document in issue passed. This document was filed in the wrong court and has been declared incompetent.
12. This being the position, the rules of time-lines are not applicable. The rules will only apply in the right forum (court). I find no basis in the argument on time-lines.
13. Had the respondent filed the appeal notice in the Court of Appeal, it should have expired within the time allowed for filing such an appeal as provided for by Order 83 of the Court of Appeal Rules.
14. This matter was a judicial review matter which was dismissed. The dismissal of Judicial Review proceedings marks the end of the matter for there are no post judgment activities.
15. It is my finding that the notice of appeal filed on 23/07/2013 is incompetent and is hereby struck out with costs.
16. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 1ST DAY OF AUGUST, 2018.

F. MUCHEMI

JUDGE

In the presence of:-

