



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
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**Jelimo v Kemboi & another (Environment & Land Case  
78 of 2008) [2025] KEELC 4954 (KLR) (2 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 4954 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT & LAND CASE 78 OF 2008**

**CK NZILI, J**

**JULY 2, 2025**

**BETWEEN**

**LILIAN JELIMO ..... PLAINTIFF**

**AND**

**ENOCK KIPKOECH KEMBOI ..... 1<sup>ST</sup> DEFENDANT**

**JOYCE CHEPCHIRCHIR TANGUT ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Following the ruling dated 21/2/2025, the defendants filed a notice of appeal dated 6/3/2025 under Rule 75 of the Court of Appeal Rules. They have now filed a notice of withdrawal of the intended notice of appeal dated 25/4/2025 under Rule 83 of the *Court of Appeal Rules*, which they now ask the court to mark as withdrawn.
2. When the matter came up on 18/6/2025, the applicants were directed to file written submissions on whether this court has jurisdiction to do so. The applicants rely on written submissions dated 24/6/2025. It is submitted that since no memorandum of appeal and a record of appeal were filed within 60 days as required by the *Rules*, the record of appeal is deemed as withdrawn. Reliance is placed on *Beijing Industrial & Researching Institute v Lagoon Development Ltd* [2015] eKLR.
3. Rule 83 of the *Civil Procedure Rules* provides that if an appeal is not filed within 60 days of the date of the order, there is a presumption of withdrawal of the appeal. Rule 82(1) states that an appeal is deemed filed when the memorandum of appeal, fees and security for costs are lodged at the appropriate registry within 60 days, after filing the notice of appeal, unless there is an application for a copy of the proceedings in the superior court within 30 days of the decision appealed against.
4. In *Mae Properties Ltd v Joseph Kibe* [2017] eKLR, the court said a notice of appeal dies a natural death after the expiry of 60 days unless leave has been sought to extend the time by the Court of Appeal. In *Charles Wanjobi Waitbaka v Gitthinji Ngure & another* [2016] eKLR, the court said that the 60 days'



timeline is both constitutional, statutory and rule-based objective of ensuring justice is dispensed in a timely, just, efficient and cost-effective manner. I think the foregoing notice of appeal dated 6/3/2025 is as dead as a dodo.

5. In *Macfoy v United Africa Co. Ltd* [1961] 3 ALL ER 1169, a nullity was described as a nullity, and sometimes it is automatically null and void without much ado, though a court may declare it so.
6. The upshot is that the notice of appeal is a nullity. It is so confirmed.
7. Orders accordingly.

**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 2<sup>ND</sup> DAY OF JULY 2025.**

In the presence of:

Court Assistant - Dennis

Munialo for defendants present

Kamau Lagat for plaintiff absent

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

