



**Kiragu v Macharia (Civil Application E036 of 2025)
[2025] KECA 2170 (KLR) (11 December 2025) (Ruling)**

Neutral citation: [2025] KECA 2170 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E036 OF 2025
S OLE KANTAI, JW LESSIT & A ALI-ARONI, JJA
DECEMBER 11, 2025**

BETWEEN

JOHNSON MURIUKI KIRAGU APPLICANT

AND

GRACE THUGURI MACHARIA RESPONDENT

(An application to strike out the Notice of Appeal by the respondent as withdrawn against the Judgment of the High Court of Kenya at Nyeri (V.S. Kosgei, J.) delivered on 12th April, 2024 in H.C. Civil Appeal No. 3 of 2021.)

RULING

1. The applicant, Johnson Muriuki Kiragu applies by Motion brought under rules 3, 84, 85, 79(i) and 86(b) of the Court of Appeal Rules that we be pleased to mark the Notice of Appeal by the respondent Grace Thuguri Macharia as withdrawn with costs or in the alternative strike it out with costs to the applicant. In grounds in support of the application and in his supporting affidavit he says that judgment in Nyeri High Court Civil Appeal No. 3 of 2021 was delivered on 12th April, 2024 in his favour; that the respondent lodged a Notice of Appeal on 24th April, 2024 and served it on him on 29th May, 2024; that the respondent failed to file an appeal within 60 days as required and it is in the interest of justice that the application be allowed.
2. The respondent in a replying affidavit depones that Notice of Appeal was lodged on time; that there was at that time a change in filing of pleadings and other documents in court creating difficulties in the filing system or platform; that Notice of Appeal was therefore served out of the time limited by the Court of Appeal Rules; that a copy of proceedings and judgment were not supplied to her by the High Court on time or at all leading to her failure to file record of appeal. Further that she has approached Federation of Women Lawyers (FIDA) to assist her; that the applicant's application is defective as it has been made 10 months after the applicant was served with Notice of Appeal; that the application should be dismissed.



3. We have perused written submissions filed by both sides.
4. The Motion came up for hearing before us on 20th May, 2025 when learned counsel Miss Doreen Natocho appeared for the applicant while the respondent, who had filed a Notice to Act in person, appeared.
5. In a highlight of written submissions Miss Natocho submitted that the respondent had not complied with rule 84 of the Court of Appeal Rules and Notice of Appeal should be marked as withdrawn.
6. The respondent told us that the application was defective as it was filed outside 30 days after Notice of Appeal had been served on the applicant; the respondent had applied for proceedings of the High Court and had copied that letter to the applicant; that she should be given time to be able to file record of appeal and prosecute the appeal.
7. Rule 85 of the Court of Appeal Rules provides that:
 85.
 - (1) If a party who has lodged a notice of appeal fails to institute an appeal within the appointed time, that party shall be deemed to have withdrawn the notice of appeal and the Court may, on its own motion or on application by any other party, make such order.
 - (2) The party in default under sub-rule (1) shall be liable to pay the costs arising therefrom of any persons on whom the notice of appeal was served.”
8. In the instant application the applicant invoked rule 85 of our rules and the 30 days rule does not apply to this application
9. The respondent lodged a Notice of Appeal on 24th April, 2024. She was required under rule 84 of the rules to lodge a record of appeal within 60 days thereafter. We note that the application is dated 24th March, 2025, a period of about 11 months after the Notice of Appeal had been lodged. No record of appeal had been lodged as required by the rules. The applicant is right in asking that the Notice of Appeal should be deemed as withdrawn.
10. We allow the Motion. Notice of Appeal lodged by the respondent is deemed as having been withdrawn. The applicant will have costs of the Motion.

DATED AND DELIVERED IN NYERI THIS 11TH DAY OF DECEMBER, 2025.

S. ole KANTAI

JUDGE OF APPEAL

.....

J. LESIIT

JUDGE OF APPEAL

.....

ALI - ARONI

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed



DEPUTY REGISTRAR

