



REPUBLIC OF KENYA



**Mutua t/a Dream Life Products Enterprises & another v Jones (Civil Appeal
(Application) E686 of 2025) [2026] KECA 481 (KLR) (6 March 2026) (Ruling)**

Neutral citation: [2026] KECA 481 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E686 OF 2025
W KARANJA, LA ACHODE & SO OKONG'O, JJA
MARCH 6, 2026**

BETWEEN

**PAUL MUTHENGI MUTUA T/A DREAM LIFE PRODUCTS
ENTERPRISES 1ST APPELLANT**

**MOSES SAFARI MUTUA T/A DREAM LIFE PRODUCTS
ENTERPRISES 2ND APPELLANT**

AND

LOUIS JONES RESPONDENT

(Being an application to strike out the record of appeal from the judgment of the High Court at Machakos (M. W. Muigai, J.) dated 16th February 2023 in HCCC No. E001 of 2023)

RULING

1. Learned counsel, Mr. Odera Were, has moved this Court vide a Notice of Motion dated 29th August 2025 seeking the striking out of the record of appeal dated 22nd August 2025. The application is predicated on the five grounds on its face and is supported by his supporting affidavit sworn on even date.
2. The gist of the said grounds and depositions is that the record of appeal was filed long after the timelines prescribed under the Court of Appeal Rules. He says that he was never served with the letter bespeaking proceedings and so the appellant cannot benefit from the certificate of delay which her counsel seems to be waving at the Court. He depones that the record of appeal was supposed to be filed by 22nd December 2023, but it was not, hence this application. He urges the Court to allow the application and strike out the said record of appeal.



3. The application is opposed by the appellant, through the affidavit sworn by Paul Muthengi Mutua dated 18th September 2025. He seems to rely on the letter bespeaking proceedings dated 31st October 2023 which is annexed to the affidavit.
4. We note, however, that even on its face, the letter is not copied to counsel for the respondent, let alone being served on them as required by the Court of Appeal Rules.
5. Before the matter was heard, the Court asked Ms. Njoroge, learned counsel for the appellant whether the said letter was copied and served on counsel for the respondent/applicant. She conceded that it had not, but still insisted on defending the application, which in our view was a blatant waste of the Court's time, having regard to the fact that the appellant even had on record an application dated 18th September 2025 seeking extension of time to serve a notice of appeal and for his record of appeal to be deemed to have been filed within time. Since counsel persisted in having her day in Court, we obliged her.
6. In light of the said concession, it is clear that the record of appeal dated 22nd August 2025 in support of the notice of appeal filed on 30th October 2023 arising from the decision of the High Court rendered on 16th February 2023 is clearly out of time and is for striking out. The appellant is excluded from leveraging on the proviso to Rule 84(1) of the Court of Appeal Rules which provides as follows:-

“(1) Subject to rule 118, an appeal shall be instituted by lodging in the appropriate registry, within sixty days after the date when the notice of appeal was lodged—

- a. a memorandum of appeal, in four copies;
- b. the record of appeal, in four copies;
- c. the prescribed fee; and
- d. security for the costs of the appeal: Provided that where an application for a copy of the proceedings in the superior court has been made in accordance with sub rule (2) within thirty days after the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted, be excluded such time as may be certified by the registrar of the superior court as having been required for the preparation and delivery to the appellant of such copy.

(2) An appellant shall not be entitled to rely on the proviso to sub rule (1) unless the appellant's application for such copy was in writing and a copy of the application was served upon the respondent.” [Emphasis ours]

7. This application is for allowing. We allow it and order that the record of appeal dated 22nd August 2025 is hereby struck out with costs to the respondent in the appeal (the applicant in the notice of motion). It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 6TH DAY OF MARCH 2026.

W. KARANJA

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JUDGE OF APPEAL

L. ACHODE



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JUDGE OF APPEAL

S. O. OKONG'O

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

