



**Opiata v National Bank of Kenya Limited (Civil Application
E406 of 2021) [2026] KECA 848 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KECA 848 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E406 OF 2021
W KARANJA, AO MUCHELULE & LM NJUGUNA, JJA
APRIL 30, 2026**

BETWEEN

JARED OTIENO OPIATA APPLICANT

AND

NATIONAL BANK OF KENYA LIMITED RESPONDENT

(Being an application for injunction from the Judgment of the High Court of Kenya at Nairobi (F. Mugambi, J.) dated 7th May 2020 in Civil Suit No. E258 OF 2024)

RULING

1. The applicant, Jared Otiemo Opiata, is seeking to have the notice of appeal dated 19th May 2020, as filed by the National Bank of Kenya Limited, the respondent, be struck out. The application dated 15th November 2021 is brought under Rule 83 of the Court of Appeal Rules, 2010. The grounds in support of the application are that the judgment, the subject of the intended appeal, was delivered on 7th May 2020, and the respondent filed and served a notice of appeal dated 19th May 2020. The respondent's letter dated 19th May 2020, bespeaking typed proceedings, was also served on the same date. By letter dated 8th April 2021, the Deputy Registrar informed the respondent's advocates that the typed proceedings were ready for collection upon payment of the requisite court fees. The respondent paid and collected the said typed proceedings on 9th April 2021. The respondent was then obligated to file a record of appeal within 60 days thereof, lapsing on 7th June 2021. No appeal has been filed or served within the stipulated time contrary to the provisions of Rule 84 of the Court of the Appeal Rules, 2022.
2. During the virtual hearing, learned counsel for the applicant, Mr. Ahomo, relied on his written submissions and argued that the notice of appeal dated and lodged on 19th May 2020 should be struck out. He submitted that the respondent had failed to institute an appeal despite the proceedings being



ready, demonstrating a loss of interest in the intended appeal. Counsel, therefore, urged the Court to allow the motion with costs.

3. There was no appearance for counsel for the respondent despite having been duly served.
4. We have considered the application, the submissions made on behalf of the applicant and the principles governing striking out under Rules 82, 83 and 84 of the Court of Appeal Rules, 2010 (now Rules 84, 85 and 86 of the Court of Appeal Rules, 2022).
5. Under Rule 82, the record of appeal was supposed to be lodged by 7th June 2021. It was not. The applicant moved this Court under Rule 83 to have the notice of appeal struck out. He was the respondent in the intended appeal, and therefore was an affected person. The application having been filed on 15th November 2021, it was brought outside the 60 days limited given the proviso to Rule 84 under which the applicant was proceeding. The respondent did not respond to the application to be able to take up the issue of the competence of the same (See *Mae Properties Limited -vs- Joseph Kibe & Another* [2017] eKLR).
6. Ideally, the application was time barred. However, we consider that since the time the appeal was supposed to be filed and when the application was lodged about 4 months had passed. Under Rule 85 of the Court of Appeal Rules, 2022:

“ 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.”

7. In *Gamma Villa Limited -vs- Kenya Ports Authority*, Civil Application No. E068 of 2022 [2023] KECA 921 (KLR), this Court held that where the requisite steps towards the institution of the appeal, such as demonstrating the request for proceedings from the superior court, obtaining a certificate of delay where appropriate, and the lodging of the record of appeal, have not been shown to have taken place, the notice of appeal may properly be deemed to have been withdrawn. Failure to take the essential step of filing the appeal within the prescribed time should lead to having the notice of appeal be deemed as withdrawn. Rule 85 serves the dual purpose of curbing abuse of process and promoting efficient and effective case management by this Court (see *Karurie -vs- Kamau*, Civil Appeal (Application) No. E134 of 2021 [2025] KECA 366 (KLR)). The mischief of a litigant lodging a notice of appeal and then goes to sleep, leaving the other part exposed to needless delay and uncertainty, should not be entertained by the court.
8. Consequently, the application not having been defended, which means that the respondent has lost interest in appealing the decision of the superior court, we hereby move, on our own motion, and deem the notice of appeal dated 19th May 2020 to have been withdrawn.
9. We make no order as to costs, the application not having been defended.

DATED AND DELIVERED AT NAIROBI THIS 30TH DAY OF APRIL 2026.

W. KARANJA

.....

JUDGE OF APPEAL



A.O. MUCHELULE

.....

JUDGE OF APPEAL

L. NJUGUNA

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

