



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Makeri & 4 others v Njeru & 5 others (Civil Appeal (Application)
E084 of 2023) [2025] KECA 918 (KLR) (26 May 2025) (Ruling)**

Neutral citation: [2025] KECA 918 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPEAL (APPLICATION) E084 OF 2023
MA WARSAME, JM MATIVO & PM GACHOKA, JJA
MAY 26, 2025**

BETWEEN

KENNETH MAINA MAKERI & 4 OTHERS APPLICANT

AND

JOHN EDWARD NJERU & 5 OTHERS RESPONDENT

(An application to strike a notice of appeal from the judgment and decree of the Environment and Land Court at Nakuru (M. Sila, J.) delivered on 27th November 2019 in ELC Case No. 228 of 2018 Formerly Nakuru HCCC No. 260 of 1999))

RULING

1. By a notice of motion dated 7th July 2023, under rules 77, 84 & 85 of the [Court of Appeal Rules](#) 2022, the applicant is seeking to strike out a notice of appeal dated 2nd December 2019 for the respondents' failure to adhere to the set down procedures and timelines as follows:
 - (2) That this Honourable Court be pleased to deem the notice of appeal dated 2nd December, 2019 and lodged on 11th December, 2019 as withdrawn for failure to adhere to the set down procedures and timelines for the institution of an appeal and the failure to file a record of appeal to date, being approximately three (3) years after filing the notice of appeal.
2. The application is supported by the supporting affidavit of Kahiga Waitindi, Advocate for the applicants. The respondent has not filed any response. When the application was called out for hearing Mr. Karanja, learned counsel was present for the applicant and there was no appearance by the respondent, though duly served.
3. We have considered the application and the submissions by the applicant. We note the notice of appeal was filed 2nd December 2019 and the typed proceedings were supplied to the respondent on 10th February 2020. These facts have not been controverted by the respondent. Therefore, it is clear that



the respondent has failed to file the record of appeal within time and has not shown any interest in pursuing the same. Therefore, it is clear that the appellant has lost interest in pursuing the appeal and the applicant is justified, rightly so, in prosecuting the appeal before us.

4. This is a proper case in which the notice of appeal should be deemed as withdrawn in accordance with Rule 85 of the *Court of Appeal Rules*.
5. Accordingly, the notice of appeal is hereby struck out with cost to the applicant.

DATED AND DELIVERED AT NAKURU THIS 26TH DAY OF MAY, 2025.

M. WARSAME

.....

JUDGE OF APPEAL

J. MATIVO

.....

JUDGE OF APPEAL

M. GACHOKA C.Arb, FCIArb

.....

JUDGE OF APPEAL

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

signed.

DEPUTY REGISTRAR.

