



**Tusker Mattresses v Gachoka (Civil Appeal (Application)
E068 of 2021) [2025] KECA 916 (KLR) (26 May 2025) (Ruling)**

Neutral citation: [2025] KECA 916 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPEAL (APPLICATION) E068 OF 2021
MA WARSAME, JM MATIVO & PM GACHOKA, JJA
MAY 26, 2025**

BETWEEN

TUSKER MATTRESSES APPLICANT

AND

JOSEPH MWANGI GACHOKA RESPONDENT

(Being an application to strike out a notice of appeal from the judgment of the High Court of Kenya at Naivasha (R. Mwongo, J.) dated 12th July 2021 in CA No. 38 of 2018)

RULING

1. By a notice of motion dated 15th October 2021, under rules 77, 84 & 85 of the Court of Appeal Rules 2022, the applicant is seeking to strike out a notice of appeal dated 23rd July 2021 on the ground that the respondent did not serve the notice within 7 days as set out in the rules.
2. The application is supported by the supporting affidavit of Mercy C. Kirui sworn on 15th October 2021. The respondent has not filed any response. When the application was called out for hearing M/s Soi, 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 that the notice of appeal was filed 23rd July 2021 and the applicant states that to date, it has not been served with the notice of appeal or the record of appeal. This fact has not been controverted by the respondent. Therefore, it is clear that the respondent has failed to serve the notice of appeal or file a 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 application before us.



4. This is a proper case in which the notice of appeal should be struck out. Accordingly, the notice of appeal is hereby struck out with costs to the applicant.

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

M. WARSAME

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JUDGE OF APPEAL

J. MATIVO

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JUDGE OF APPEAL

M. GACHOKA C.Arb, FCIArb

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JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR.

