



**Transnzoia Securities Limited v Stuadae (Civil Application
E030 of 2023) [2025] KECA 1048 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KECA 1048 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CIVIL APPLICATION E030 OF 2023
AK MURGOR, KI LAIBUTA & GWN MACHARIA, JJA
MAY 9, 2025**

BETWEEN

TRANSNZOIA SECURITIES LIMITED APPLICANT

AND

ANN MUTHOMI STUADTE RESPONDENT

*(Being an Application to strike out a Notice of Appeal dated 13th February
2023 against the Judgment of the Environment and Land Court (Dena, J.)*

RULING

1. The Notice of Motion dated 25th April 2023 and filed by the applicant, Transnzoia Securities Limited, is brought pursuant to rule 79 and 84, 85 and 86 of the Court of Appeal Rules seeking, inter alia: that the Notice of Appeal dated 13th February 2023 and filed on the same day from the Judgment of the Environment and Land Court delivered on 1st February 2023 be struck out.
2. The Motion is brought on several grounds, namely that no appeal lies against the Judgment because certain essential steps were not taken within the prescribed time. It was contended that, firstly, the Notice of appeal is void and incompetent having been filed by the firm of Mochere & Co. Advocates, who were not on record for the Respondent at the time; that they had failed to comply with Order 9 Rule 9 of the Civil Procedure Rules and serve a Notice of Change of Advocates on behalf of the Respondent after the Judgment was delivered; that, secondly, the Applicant was served with the Notice of Appeal and an unfiled request for certified proceedings dated 13th February 2023 on 26th March 2023, and that, therefore, the Notice and request for certified typed proceedings were served out of time. It was finally contended that this application was brought without delay from the date of service of the Notice of appeal.
3. The Motion which is supported by the affidavit of Vincent Olala, counsel for the Applicant, reiterates the grounds and further deposes that the firm of Muregi Okere Advocates was on record for the



- Respondent in the lower Court and that, on 20th March 2023, the firm of Mochere & Co. Advocates served the Applicant with a Notice of Change of Advocates without obtaining the requisite consent from the Respondent's outgoing advocate or prior leave of the lower court as required by Order 9 Rule 9 of the Civil Procedure (Amendment) Rules, 2020.
4. It was further deponed that the Notice of Appeal filed on 13th February 2023 and the unfiled request for certified typed proceedings were served on the Applicant on 26th March 2023, which was way out of the 7 days prescribed by Rule 79 and 84 of the Court of Appeal Rules, 2022 and as a consequence, the Notice of Appeal was defective, with the result that no appeal against the Judgment lies to this Court; that, further, the Respondent has not sought leave to appeal out of time.
 5. As a brief background to this application, the Applicant filed a suit against the Respondent seeking orders for: a) a mandatory injunction directing the Respondent whether by herself or through her servants, agents, employees, assigns or anybody claiming under her to forthwith vacate and remove her personal belongings from the Applicant's property known as Cape Blush Maisonette on title No. Kwale/Diani Beach Block/1XX8 (the suit property) measuring about 2.130 hectares situate in Kwale; b) a permanent injunction restraining the Respondent, her servants, agents, employees, assigns or anybody claiming under her and or anybody whatsoever from re- entering, encroaching, trespassing, remaining on, putting up any structures thereon, carrying out any alterations, reconnecting electricity or water unto the property, leasing, damaging, wasting away and or in any way interfering with the suit property; c) Mesne profits for trespass from 3rd October 2018 until payment in full; and d) Costs of this suit.
 6. The Applicant's claimed that it is the registered proprietor of the suit property, and that by invitation of the Applicant's majority shareholder and Director one George Barbour, the Respondent was invited onto the suit property; that George Barbour died in October 2018 and that, since his demise, the Respondent has unlawfully remained in the premises as a trespasser despite demands that she vacate the property.
 7. The Respondent opposed the suit claiming to be George's partner and spouse, and that, in his last will, the deceased bequeathed the suit property to her, including his shares in the Applicant. She denied being a trespasser and claimed she was a beneficial shareholder and member of the Applicant.
 8. The trial Judge upon considering the suit, held in favour of the Applicant and entered judgment against the Respondent. Aggrieved by the decision, the Respondent filed the Notice of Appeal whereupon, the Applicant brought this application.
 9. We have considered the Motion, the reply, and the parties' written submissions. Before us is an application seeking to strike out the Respondent's Notice of Appeal for the reason that, firstly, the Respondent's incoming advocate failed to obtain the requisite consent from the Respondent's outgoing advocate as required by Order 9 Rule 9 of the Civil Procedure (Amendment) Rules, 2020 and, secondly, that the Notice was served out of time.
 10. As concerns the issue of change of representation without obtaining leave, it is necessary to point out that, these being new proceedings in this Court, which is endowed with original jurisdiction, there was no need to file a notice of change of advocates. Order 9 Rule 9 of the Civil Procedure Rules applies to representation in an ongoing or concluded suit in the lower court, but not on appeal. (See: Minister for Internal Security and Provincial Administration vs Centre for Rights, Education and Awareness (CREAW) & 8 Others [2013] eKLR; and Ezekiel Kiprono Lamai vs Lawrence Kibor Ngamai [2020] eKLR). We need say no more in this regard.



11. On the contention that the Notice of Appeal was served on the Applicant out of time, the instant application is brought under rule 86 (b) of this Court’s rules, which provides:

“A person affected by appeal may at any time, either before or after the institution of the appeal, apply to the Court to strike out the notice or the appeal, as the case may be, on the ground—

- a. that no appeal lies or
- b. that some essential step in the proceedings has not been taken or has not been taken within the prescribed time.

Provided that an application to strike out a notice of appeal or an appeal shall not be brought after the expiry of thirty days from the date of service of the notice of appeal or record of appeal as the case may be.”

12. It is now settled principle that the power of this Court to strike out an appeal is discretionary, and is exercised based on the peculiar circumstances of each case. See *Standard Ltd & another vs Onchieku* (Civil Application 134 of 2019) [2023] KECA 1275 (KLR).

13. In the case of *Mukenya Ndunda vs Crater Automobiles Limited* [2015] eKLR, this Court observed:

“The power to strike out an appeal or notice of appeal on account of failure by an appellant to follow the rules of procedure requires to be exercised carefully and only in cases where it is shown that the party at fault flagrantly or deliberately or flippantly or recklessly failed to follow the rules.”

14. The above is clear that this Court is empowered to strike out a notice of appeal or a record of appeal for want of form, or for failure to comply with the procedure spelt out by the rules. But prior to so doing, the proviso to rule 86 is of pertinence. It expressly states that the power to strike out a notice or an appeal shall not be brought “...after the expiry of thirty days from the date of service of the notice of appeal or record of appeal...”

15. According to the record, the Judgment was rendered on 1st February 2023. The Notice of Appeal dated 13th February 2023 and the unfiled request for certified typed proceedings were served on the Applicant on 26th March 2023. This application was dated 25th April 2023, which means that it was brought within the 30 days’ timeframe specified by rule 86.

16. Turning to the service of the Notice of Appeal. Rule 79 specifies that the Notice of Appeal should be served within 7 days of lodging of the Notice. It was lodged on 13th February 2023 and ought to have been served on or before 20th February 2023. The record shows that it was served on the Applicant on 26th March 2023, which was outside the 7 days period prescribed by the rules. As a consequence, we are satisfied that the Applicant’s application is merited, particularly since nothing shows that the Respondent has sought leave to extend time for serving the Notice of Appeal. It would appear that she has lost interest in pursuing her appeal.

17. Accordingly, the Notice of Motion dated 25th April 2023 is merited and is hereby allowed with the result that the Notice of Appeal dated 13th February 2023 and filed on the same date is hereby struck out with costs to the applicant.

It is so ordered.

DATED AND DELIVERED AT MOMBASA THIS 9TH DAY OF MAY, 2025.



A. K. MURGOR

JUDGE OF APPEAL

DR. K. I. LAIBUTA CARB, FCIARB.

JUDGE OF APPEAL

G. W. NGENYE-MACHARIA

JUDGE OF APPEAL

I certify that this is the true copy of the original

Signed

DEPUTY REGISTRAR

