



**National Union of Water and Sewerage Employees (NUWASE) & 3 others v
Nairobi City Water & Sewerage Company Limited & 5 others (Civil Appeal
(Application) 206 of 2020) [2025] KECA 1464 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1464 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) 206 OF 2020
W KARANJA, M NGUGI & JM NGUGI, JJA
JULY 31, 2025**

BETWEEN

**NATIONAL UNION OF WATER AND SEWERAGE EMPLOYEES
(NUWASE) 1ST APPELLANT
RUFUS OLEFA OSOTSI 2ND APPELLANT
PHILEMON OTIENO ATIK 3RD APPELLANT
ANNE BURUGU 4TH APPELLANT**

AND

**NAIROBI CITY WATER & SEWERAGE COMPANY LIMITED 1ST
RESPONDENT
NAIROBI CITY COUNTY GOVERNMENT 2ND RESPONDENT
KENYA COUNTY GOVERNMENT WORKERS UNION 3RD RESPONDENT
REGISTRAR OF TRADE UNIONS 4TH RESPONDENT
ELIJAH OTIENO OWACH 5TH RESPONDENT
HON ATTORNEY GENERAL 6TH RESPONDENT**

(Being an Application to strike out the Notice of Appeal dated 2nd November, 2019 and the Record of Appeal dated 18th May, 2020 from the Ruling of the Employment and Labour Relations Court at Nairobi, (Onyango, J.) dated 22nd day of November, 2019 in ELRC Case No. 755 of 2013 As Consolidated With 2133 of 2011, 823A of 2012, 2504 of 2012, 2020 of 2012, 2062 of 2012, 1526 of 2013, 1007 of 2017, 977 of 2017 and 2107 of 2016)



RULING

1. The Notice of Motion application before us is dated 9th October, 2020. It is by the 5th respondent, Elijah Otieno Awach in the main, it seeks for prayers that both the Notice of Appeal dated 2nd November, 2019 and the Record of Appeal dated 18th May, 2020 be struck out or that the appeal herein be deemed to have been withdrawn. The grounds for the application are listed on the face of the application. In short, the grounds are that the Notice of Appeal, though dated and filed on 2nd November, 2019 was never served on the applicant while the Record of Appeal was filed and served at least 178 days without leave of the Court.
2. The application is supported by the affidavit of Elijah Otieno Awach deposed on 9th May, 2020.
3. The appellant deposes that the Notice of Appeal which was served on them is (improbably) dated 2nd November, 2019 following the judgment of the Environment and Land Court delivered on 22nd November, 2019. It is unclear when that Notice was filed in the registry – in part because it is not sealed by the Deputy Registrar of the superior court. The applicant avers that despite the filing, no service of the Notice of Appeal was effected upon him as required by Rule 77(1) of the Court of Appeal Rules, 2022. That Rule provides:

“An intended appellant shall, before or within seven days after lodging the notice of appeal, serve copies thereof on all persons directly affected by the appeal.”
4. The applicant contends that the failure to serve the Notice of Appeal within the stipulated time is fatal and renders the appeal incompetent ab initio. Additionally, the applicant argues that it is fatal that the Notice of Appeal which is on record is not sealed with the stamp of the court. In support, the applicant relies on *Law Society of Kenya v Centre for Human Rights and Democracy & 12 Others* [2014] eKLR, where the Supreme Court affirmed that failure to serve a Notice of Appeal in time goes to the jurisdiction of the appellate court.
5. The second ground relates to the delay in filing the Record of Appeal. The applicant submits that the Record of Appeal was filed on 18th May, 2020, after the prescribed sixty-day period and that no leave or extension of time was sought or granted by the Court. Under Rule 84 of the Court of Appeal Rules, 2022, it is provided that:

“

“(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

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- 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 subrule (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 subrule (1) unless the appellant's application for such copy was in writing and a copy of the application was served upon the respondent. (3) The period specified in subrule (1) for the institution of appeals shall apply to appeals from superior courts in the exercise of their bankruptcy jurisdiction."

6. The Court notes that no certificate of delay or application for extension of time has been placed before it. Additionally, the applicant has averred that he was not served with any letter bespeaking proceedings.

7. The timelines for filing appeals in this Court are mandatory and not merely directory. This principle was upheld in *Salat v Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR, where the Supreme Court stated:

"There must be strict compliance with the rules of the Court regarding the steps taken in lodging an appeal."

8. The respondents/appellants did not file any affidavit in reply to contest the factual assertions made by the applicant, nor did they seek validation of the steps taken outside the procedural bounds. The submissions on record for the appellants are dated 21st May, 2021 but they are for the appeal itself. The appellants did not file any submissions with respect to the application on hand.

9. This case is on all four with the decision in *Daniel Nkirimpa Monirei v Sayialel Ole Koilel & 4 others* [2016] KECA 148 (KLR). There, this Court stated:

"13. Whichever way, one looks at it, there was no service of the Notice of Appeal on the applicant. The purpose of service of a Notice of Appeal is to alert the parties being served that the case in question has not been concluded yet as the same has been escalated to another level. This enables the party to prepare and get ready for another fight, be it by way of gathering resources or just getting mentally prepared for defending the intended appeal. Failure to serve a party with a Notice of Appeal within the time prescribed by law gives a party false belief that the matter has been concluded, only to be ambushed later with the record of appeal in which the said notice is tucked away somewhere in the record. That occasions prejudice to the ambushed party, and it is in our view a habit that should not be countenanced in any fair and just process. That would explain why Rule 77(1) of the Court of Appeal Rules is couched in mandatory terms.

14. From the above analysis, it is clear that there is no valid Notice of Appeal on record, to clothe us with the requisite jurisdiction to entertain the appeal herein. We have no hesitation in striking out the Notice of Appeal dated 30th October, 2014. That would have taken care of the Record of Appeal. It would nonetheless be remiss of us not to deal with the prayer for striking out the Record of Appeal itself."



10. Regarding the Record of Appeal which had been filed and served out of time like in the present case, the Court stated:

“ 15.This would therefore inevitably mean that the Record of Appeal is not properly on record, and it too ought to be struck out. There were too many errors made when lodging this appeal, which in our view cannot be brushed aside under the guise of inadvertence. Interestingly, the appellant has not even tried to invoke the provisions of Article 159 (2) (d) of the Constitution or Section 3A and 3B of the Appellant Jurisdiction Act.

16. However, even if he had done so, jurisprudence emanating from this Court on these provisions is clear, and it could not have accorded the respondent any solace.

In the case of Ramji Davji Vekaria vs Joseph Oyula, [2011] eKLR, this Court held that lodging an appeal out of time is not a procedural technicality which can be cured by the Court invoking the overriding principle. The issue is a substantive one that goes to the core of ensuring that an intended respondent or interested/ affected party is accorded reasonable time to prepare for an appeal.”

11. As it was in the Daniel Nkirimpa Monirei Case, so it is here: The two procedural defects — the failure to serve the Notice of Appeal and the failure to file the Record of Appeal within time without leave — go to the root of the jurisdiction of this Court to entertain the appeal. The cumulative effect is that the appeal is incompetent and liable to be struck out.

12. Accordingly, we allow the application dated 9th October, 2020. The Notice of Appeal and the Record of Appeal filed by the respondent are hereby struck out. The applicant shall have the costs of this application.

13. Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 31ST DAY OF JULY, 2025.

W. KARANJA

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JUDGE OF APPEAL

MUMBI NGUGI

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JUDGE OF APPEAL

JOEL NGUGI

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

