



Chief Executive Officer, Institute of Certified Public Accountants (ICPAK) Kenya v Musa & another (Civil Application 34 of 2016) [2024] KECA 193 (KLR) (23 February 2024) (Ruling)

Neutral citation: [2024] KECA 193 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION 34 OF 2016
DK MUSINGA, KI LAIBUTA & A ALI-ARONI, JJA
FEBRUARY 23, 2024**

BETWEEN

THE CHIEF EXECUTIVE OFFICER, INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS (ICPAK) KENYA APPLICANT

AND

WACHIRA KARIUKI MUSA 1ST RESPONDENT

THE HON ATTORNEY GENERAL 2ND RESPONDENT

(Being an application to deem as withdrawn the respondent's Notice of Appeal dated 30th September 2015 from the Judgment of the High Court of Kenya at Nairobi (Mumbi Ngugi, J.) delivered on 17th September 2015 in Constitutional Petition NO. 590 of 2014.)

RULING

1. The applicant's notice of motion dated 12th February 2015, brought under rule 83 of the Court of Appeal Rules, 2010 seeks an order that the 1st respondent's notice of appeal dated 30th September 2015 and filed on 1st October 2015 be deemed to have been withdrawn. The application was supported by an affidavit sworn by John Ogembo of Ogembo & Associates Advocates, who are on record for the applicant. He stated that the High Court delivered its judgment on 17th September 2015 dismissing the 1st respondent's petition with costs.
2. Dissatisfied with that judgment, the 1st respondent filed a notice of appeal on 1st October 2015. However, no appeal was filed thereafter within a period of 60 days from the date of filing of the notice of appeal.
3. When the application came up for hearing on 27th February 2023, Ms. Obiero appeared for the applicant, but there was no appearance for the respondents despite service of a hearing notice on 8th February 2023 by way of an email.



4. Ms Obiero adopted the applicant’s submissions dated 17th February 2023. The respondents did not file any submissions. We have considered the application and the submissions on record. Rule 82 (1) of this Court’s Rules of 2010 (now repealed), required that an appeal be instituted within 60 days of the date when the notice of appeal was lodged. The 60 days period expired on 1st December 2015 and, by that date, no appeal had been filed. Rule 83 of the repealed Rules expressly provided that:

“If a party who has lodged a notice of appeal fails to institute an appeal within the appointed time he shall be deemed to have withdrawn his notice of appeal and the court may on its own motion or on application by any party make such order. The party in default shall be liable to pay the costs arising therefrom of any persons on whom the notice of appeal was served.”

5. Without much ado, the provisions of the above quoted rule 83 must be given effect. Consequently, we hereby order that the notice of appeal filed on 1st October 2015 be and is hereby deemed to have been withdrawn. The 1st respondent shall bear the applicant’s costs arising from the service of the said notice.

DATED AND DELIVERED AT NAIROBI THIS 23RD DAY FEBRUARY, 2024.

D. K. MUSINGA, (P).

.....

JUDGE OF APPEAL

DR. K. I. LAIBUTA

.....

JUDGE OF APPEAL

ALI-ARONI

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

