



**Supeyo & another v Karingithe (Suing as the representative of the Estate of Karkise Ole Mosire & 2 others; Nyamemba (Interested Party) (Civil Application E254 of 2021) [2024] KECA 271 (KLR) (8 March 2024) (Ruling)**

Neutral citation: [2024] KECA 271 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E254 OF 2021  
DK MUSINGA, M NGUGI & PO KIAGE, JJA  
MARCH 8, 2024**

**BETWEEN**

**SIMON NDUNGU SUPEYO ..... 1<sup>ST</sup> APPLICANT**

**JOSEPH CRESPERS SUPEYO TUMPES ..... 2<sup>ND</sup> APPLICANT**

**AND**

**MARITUAL KARINGITHE (SUING AS THE REPRESENTATIVE OF THE ESTATE OF KARKISE OLE MOSIRE) ..... 1<sup>ST</sup> RESPONDENT**

**BOMAN MOSIRO ..... 2<sup>ND</sup> RESPONDENT**

**ELIJAH MOSIRO ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**DR PATRICK TUMBO NYAMEMBA ..... INTERESTED PARTY**

*(An application for the court to mark as withdrawn the Notice of Appeal dated 26th May 2020 from the Ruling of the Environment and Land Court of Kenya at Kajiado (Christine Ochieng', J.) delivered on 21st May 2020 in ELC Case No. 372 of 2017)*

**RULING**

1. The applicants' Notice of Motion dated 15<sup>th</sup> July 2021, brought under rules 81 (1), 82 (2) and 83 of the Court of Appeal Rules, 2010, (now repealed), seeks to have the respondents' notice of appeal dated 26<sup>th</sup> May 2020 and lodged on 27<sup>th</sup> May 2020 deemed as withdrawn.
2. The application was grounded on an affidavit sworn by the 2<sup>nd</sup> applicant which states, inter alia, that the Environment and Land Court (ELC) at Kajiado delivered a ruling in ELC Case no 372 of 2017 on 21<sup>st</sup> May 2020 dismissing the respondents' application; that the respondents were aggrieved by the



said ruling and filed a notice of appeal dated 26<sup>th</sup> May 2020; that the respondents were obligated to institute the appeal within sixty (60) days from the date of lodging the notice of appeal, but to date they have not done so.

3. The applicants added that the judgment of the trial court was delivered on 9<sup>th</sup> December 2019 and the ruling that was delivered on 21<sup>st</sup> May 2020 was in respect of the respondents' application that sought a review of the said judgment. The applicants had, therefore, been denied the fruits of the judgment that was in their favour.
4. When the application came up for hearing before this Court, the applicants' learned counsel urged the Court to grant the orders sought, saying that the trial court's proceedings were ready since 12<sup>th</sup> February 2011 but the respondents have failed to file the record of appeal.
5. The respondents did not file any response to the application.

However, their advocate, Mr. Robert Mutitu, conceded that to date he had not filed the record of appeal. He stated that the respondents had withdrawn a memorandum of appeal that they had filed, but subsequently filed an application under certificate of urgency, E045 of 2024, seeking stay of execution of the trial court's judgment, pending hearing of an intended appeal, and the application is premised on the notice of appeal sought to be deemed as withdrawn. The Court declined to certify as urgent the aforesaid application. He submitted that if the application is allowed the intended appeal shall be defeated.

6. Both Mr. Biko Angwenyi and Mr. Rotich, learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> interested parties, respectively, who also had not filed any response to the application, chose to leave the matter in our hands.
7. Rule 83 of the repealed Court of Appeal Rules, 2010, stated as follows:

“ 83. Effect of default in instituting appeal

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.”

8. It is not in dispute that the respondents have not filed the record of appeal since 9<sup>th</sup> December 2019 when the impugned judgment was delivered by the trial court. The trial court's proceedings have been available since 12<sup>th</sup> February 2021.
9. There is no formal response to the application since the respondents did not file any replying affidavit. The oral submissions by Mr. Mutitu that there is a pending application for stay of execution of the impugned judgment that is premised on the notice of appeal is, therefore, neither here nor there. The said application was not before us, and even if it was, given the conceded failure to file the record of appeal for more than three (3) years, there can be no reason for sustaining the notice of appeal on record.
10. We allow the applicants' notice of motion dated 15<sup>th</sup> July 2021.

The respondents shall bear the costs of the said application.

**DATED AND DELIVERED AT NAIROBI THIS 8<sup>TH</sup> DAY OF MARCH 2024.**

**D. K. MUSINGA, (P)**



.....  
**JUDGE OF APPEAL**

**P. O. KIAGE**

.....  
**JUDGE OF APPEAL**

**MUMBI NGUGI**

.....  
**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

