



**Amuga and Company Advocates v Nzisa (Civil Application
E195 of 2017) [2024] KECA 431 (KLR) (26 April 2024) (Ruling)**

Neutral citation: [2024] KECA 431 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E195 OF 2017
SG KAIRU, P NYAMWEYA & GWN MACHARIA, JJA
APRIL 26, 2024**

BETWEEN

AMUGA AND COMPANY ADVOCATES APPLICANT

AND

JOYCE NZISA RESPONDENT

(An application to strike out notice of appeal from the ruling/order of the High Court of Kenya at Nairobi (Fred Ochieng, J.) dated 17th July 2017 in Miscellaneous Civil Suit No. 12 of 2014)

RULING

1. The applicant, the law firm of Amuga and Company Advocates, moved the Court by application dated 14th August 2017 seeking an order that the Notice of Appeal dated and lodged in the High Court on July 19, 2017 by the respondent be struck out. The application is made under Rule 84 (now Rule 86) of the [Court of Appeal Rules](#) and is based on the grounds that; the intended appeal is against a ruling striking out an appeal which the respondent had filed before the High Court under Order 49, Rule 7 of the [Civil Procedure Rules](#) against the decision of the Registrar of the High Court settling terms of sale of an immovable property in execution of decree; that there is no right of appeal against that ruling and the respondent did not obtain leave to appeal.
2. Learned counsel Mr. Amuga in his submissions urged that the ruling of July 17, 2017 given by F. Ochieng, J. (as he then was) which the respondent intends to challenge upheld a preliminary objection by the applicant and struck out an appeal the respondent had filed challenging the decision of the Deputy Registrar given on January 15, 2016. Counsel referred to decisions of this Court in [James Mwakio vs. Kenya Commercial Bank Limited](#) [1995] eKLR and [Kenya Commercial Bank Limited vs Tony Manaseh Esipeya](#) [199] eKLR where the Court struck out appeals for want of leave to appeal. Counsel added that in any event, the respondent has lost interest in the intended appeal as it is more than six years since the impugned decision was made.



3. The respondent, who appears in person, filed a replying affidavit in which she deposes, among other things, that the application is based on a mistake of fact that no leave to appeal was obtained when in fact leave to appeal was granted by the High Court.
4. The record shows that in Ruling No. 2 delivered on March 6, 2018, in dealing with the respondent’s application dated October 6, 2017 the learned Judge of the High Court expressed in paragraphs 43 and 44 as follows:
 - “ 43. In the event, the first aspect of this application, which ought to be determined, is whether or not leave, ought to be granted to Joyce, to file her appeal, to challenge the ruling dated 17 July 2017.
 44. The said ruling resulted in the striking out of “the appeal” or the Reference from taxation which had been filed in court on 15th February 2016. That “appeal” or Reference was in relation to a Ruling which the learned Deputy Registrar made on 15 January 2015.”
5. Later, at paragraph 54, the Judge expressed:
 - “ 54. Therefore, Joyce is hereby granted leave to appeal against the Ruling dated 17th July 2017.”
6. Although that Order, granting the respondent leave to appeal was made after the filing of the notice of appeal on July 19, 2017, it did, in our view, cure the defect the applicant has complained of in the present application.
7. In the result, we decline to strike out the notice of appeal. The application dated August 14, 2017 therefore fails and is dismissed. As the defect was cured after this application had already been filed, the applicant will have the costs of this application.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF APRIL 2024.

S. GATEMBU KAIRU, FCIArb

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JUDGE OF APPEAL

P. NYAMWEYA

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JUDGE OF APPEAL

G.W. NGENYE-MACHARIA

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

