



**Kamau & another v Waruingi & another (Civil Application  
E072 of 2022) [2024] KECA 1028 (KLR) (12 April 2024) (Ruling)**

Neutral citation: [2024] KECA 1028 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPLICATION E072 OF 2022  
J MOHAMMED, LK KIMARU & AO MUCHELULE, JJA  
APRIL 12, 2024**

**BETWEEN**

**JACKSON MARICHU KAMAU ..... 1<sup>ST</sup> APPLICANT**

**KARUGA KAMAU ..... 2<sup>ND</sup> APPLICANT**

**AND**

**JANE MUTHONI WARUINGI ..... 1<sup>ST</sup> RESPONDENT**

**SIMON WARUINGI KAMAU ..... 2<sup>ND</sup> RESPONDENT**

*(Being an application for striking out the Notice of Appeal dated 15th June, 2022, pursuant to the judgment delivered by the Environment and Land Court of Kenya at Murang'a (Gacheru, J.) in ELC Case No. 38 of 2020 (OS))*

**RULING**

1. Before this Court is a notice of motion dated 7<sup>th</sup> September, 2022, brought under Rules 75 and 77 of the then Court of Appeal Rules (2010), substantively seeking orders to strike out the respondents' notice of appeal dated 15<sup>th</sup> June, 2022, with costs to the applicants.
2. The application is supported by grounds on its body and a supporting affidavit of J. N. Kirubi, sworn on 7<sup>th</sup> September, 2022, together with annexures thereto. The applicants contend that the respondents' suit against the applicants, filed before the Environment and Land Court, (ELC) at Murang'a, was dismissed vide a judgment of the court dated 9<sup>th</sup> June, 2022. The applicants aver that the respondents lodged a notice of appeal on 22<sup>nd</sup> June, 2022, and served the same upon the applicants, via email, on 9<sup>th</sup> August, 2022. It is the applicants' contention that the notice of appeal was served out of time, as the respondents was required within seven (7) days, after lodging the notice, to serve a copy of the notice of appeal upon the applicants, pursuant to the provisions of Rule 77 of the rules of this Court. The applicants state that the respondents failed to file an application for extension of time within



which to serve the notice of appeal upon the applicants. The applicants aver that the respondents' notice of appeal, having been served out of time, ought to be struck out. They invited us to allow their application as prayed.

3. The application was unopposed. The respondents did not file any response to the applicants' application. Neither did they file any written submission despite being requested to do so by the Court.
4. The application was canvassed by way of written submissions by the applicants. The respondents did not appear before us despite being duly served with a hearing notice. In their written submissions, the applicants reiterated the grounds upon which they relied upon in their application. The applicants invited this Court to strike out the notice of appeal lodged by the respondents with costs to the applicants.
5. The rules of this Court require any party who desires to appeal to this Court, to lodge the notice of appeal within fourteen days of the date of the decision, against which they desire to appeal. Rule 77 directs such a party to serve a copy of the notice of appeal to all persons directly affected by the appeal within seven days, after lodging the notice of appeal. It is evident that the judgment of the ELC that was sought to be challenged was delivered on 9<sup>th</sup> June, 2022. The respondents lodged their notice of appeal against the said decision on 22<sup>nd</sup> June, 2022. A copy of the notice of appeal was served upon the applicants on 9<sup>th</sup> August, 2022, which is outside the timeline provided by the rules of this Court. It has previously been held by this Court that the rules of procedure and timeline of this Court, are not within the ambit of the general discretion provided for under Article 159 of *the Constitution*, with respect to procedural technicalities, but are there to regulate the conduct of parties before this Court so as to accord fairness to all parties. (See Patrick Kiruja Kithinji vs Victor Mugira Marete [2015] eKLR.)
6. In the present application, it is clear that the notice of appeal was served out of time. The respondents did not bother to seek extension of time before this Court to serve the said notice upon the applicants. In Nicholas Kiptoo Arap Korir Salat v. Independent Electoral and Boundaries Commission & 7 Others [2014] eKLR, the Supreme Court reiterated that where a law provides for the time within which something ought to be done, if the time lapses, one must seek extension of time as required by the Rules.
7. The applicants filed the instant application, seeking to strike out the respondents' notice of appeal, within thirty days of service of the notice of appeal, as is required by Rule 86 of this Court's Rules.
8. Accordingly, we hereby allow the applicants' application to strike out the notice of appeal dated 15<sup>th</sup> June, 2022, for contravening the provisions of Rule 77 of the Rules of this Court. The applicants will have costs of the application.

**DATED AND DELIVERED AT NYERI THIS 12<sup>TH</sup> DAY OF APRIL, 2024.**

**JAMILA MOHAMMED**

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**JUDGE OF APPEAL**

**L. KIMARU**

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**.. JUDGE OF APPEAL**

**A. O. MUCHELULE**

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**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

