



**Kibui v Njoroge & 3 others (Civil Appeal (Application) 184  
( (E034) of 2020) [2024] KECA 999 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KECA 999 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPEAL (APPLICATION) 184 ( (E034) OF 2020  
W KARANJA, LK KIMARU & AO MUCHELULE, JJA  
JULY 26, 2024**

**BETWEEN**

**NANCY WAIRIMU KIBUI ..... APPLICANT**

**AND**

**PETER WACHIRA NJOROGE ..... 1<sup>ST</sup> RESPONDENT**

**MICHAEL GACHIRI NJOROGE ..... 2<sup>ND</sup> RESPONDENT**

**JAMES WACHIRA WAMBUGU ..... 3<sup>RD</sup> RESPONDENT**

**JULIUD KIRUTU GACHIRI ..... 4<sup>TH</sup> RESPONDENT**

*(An application under Rule 58 (3) of the Court of Appeal  
Rules, Section 1'A', 1'B' and 3'A' of the Civil Procedure Act)*

**RULING**

1. Nancy Wairimu Kibui, the applicant herein filed an application pursuant to Rule 58 (3) of the [Court of Appeal Rules](#) seeking the following two orders; that this Court reviews and sets aside the order it issued on 4<sup>th</sup> March 2024 striking out her record of appeal, and secondly, that the Court reinstates the record of appeal for hearing and final disposal. The application is supported by the grounds stated on the face of the application and the annexed affidavits of the applicant and his advocate, Charles Muchemi Karweru.
2. The applicant relied on essentially two grounds in support of the application; that she was not served with the application that sought to strike out her record of appeal by the firm of advocates representing the respondent, and that the said order was obtained on the strength of material non-disclosure which was to the effect that this Court had previously considered the applicant's application and validated the said notice of appeal and deemed it to have been properly filed and served to the respondents *vide Nyeri Court of Appeal Civil Application No. 40 of 2017*.



3. The application is opposed. Peter Wachira Njoroge, one of the respondents, swore a replying affidavit in opposition to the application. In the said affidavit, he deponed that the allegations by the applicant that her advocate had not been served with this application was untrue. He stated that the application was served via the applicant's advocate's known email address. He was of the view that the applicant and her advocates, on their own volition chose not to attend court on the date the application had been scheduled for hearing. He reiterated that there was no basis on the claim made by the applicant that the respondents were guilty of material non-disclosure. He averred that the applicant was misleading the Court and seeking to lay blame on the wrong party. He urged the Court to dismiss the application with costs.
4. Both the applicant's and the respondents' counsel filed their respective written submissions. They wholly relied on them during the plenary hearing of the application. Two issues came to the fore that will determine in this application. The first is that by virtue of a ruling delivered by this Court (S. ole Kantai, J.A.), on 21<sup>st</sup> February 2018 in Nyeri Court of Appeal Civil Application No. 40 of 2017, this Court allowed the applicant's application which had sought orders to the effect that the notice of appeal, which had been filed in time but not served in time, be deemed to have been properly filed and served in time. This fact was not brought to the attention of the court, (P. Nyamweya, J.A.). If this fact had been brought to the attention of the Court, in all probability, the application would have been dismissed.
5. Secondly, and more importantly, Mr. Karweru, learned counsel for the applicant established before us that the email address the Deputy Registrar used to send the hearing notice to him was erroneous hence the reason why he was not put in notice in regards to the date that the application was scheduled to be heard by the court. The email address that the court used is karweruadvocates@gmail.com instead of karweruadvocate@gmail.com. The critical error made was in the addition of the letter "s" in the wrong email address used by the Deputy Registrar of this Court. This was inadvertent mistake by the court itself which cannot be visited upon the applicant.
6. In the premises therefore, the application dated 20<sup>th</sup> March 2024, is for allowing. It is hereby allowed on terms that the orders issued by this Court on 4<sup>th</sup> March 2024, striking out the applicant's record of appeal is hereby set aside and substituted with an order of this Court dismissing the said application filed by the respondents with costs to the applicant. The record of appeal herein is reinstated to hearing. The Deputy Registrar of the Court is directed to list the appeal for case management so that the appeal may be heard on priority basis.
7. It is so ordered.

**DATED AND DELIVERED AT NYERI THIS 26<sup>TH</sup> DAY OF JULY, 2024.**

**W. KARANJA**

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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**

