



**Amerisource Limited & another v Nation Media Group Limited (Civil Appeal (Application) 445 of 2019) [2024] KECA 844 (KLR) (12 July 2024) (Ruling)**

Neutral citation: [2024] KECA 844 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL (APPLICATION) 445 OF 2019  
DK MUSINGA, SG KAIRU & LA ACHODE, JJA  
JULY 12, 2024**

**BETWEEN**

**AMERISOURCE LIMITED ..... 1<sup>ST</sup> APPELLANT**

**ALEX MAUTIA MORUME ..... 2<sup>ND</sup> APPELLANT**

**AND**

**NATION MEDIA GROUP LIMITED ..... RESPONDENT**

*(An application for leave to appeal out of time against the Ruling and Order of the High Court of Kenya at Nairobi (J. K. Sergon, J.) delivered on 9th November 2018 in H.C.C.C. No. 253 of 2011)*

**RULING**

1. The applicant's notice of motion dated 23<sup>rd</sup> January 2020 brought under rule 75(2) and (4), rule 82, 83 and 84 of the Court of Appeal Rules 2010, seeks to strike out the 1<sup>st</sup> appellant's notice of appeal filed on 19<sup>th</sup> September 2019, and the 2<sup>nd</sup> appellant's notice of appeal filed on 10<sup>th</sup> July 2019 as they were filed out of time.
2. The applicant states, inter alia, that the impugned ruling sought to be appealed from was delivered on 9<sup>th</sup> November 2018; that on 16<sup>th</sup> November 2018 the appellants filed an application for leave to appeal the said ruling; that on 27<sup>th</sup> June 2019 the High Court granted leave to the appellants to appeal the said ruling and thereafter the 2<sup>nd</sup> appellant filed his notice of appeal; that the record of appeal dated 10<sup>th</sup> September 2019 on behalf of the 1<sup>st</sup> appellant is bad in law for want of a duly filed and served notice of appeal; and the 2<sup>nd</sup> appellant's notice of appeal is bad in law as the same was filed out of time without leave of the court.
3. In response, the 2<sup>nd</sup> appellant, who is a director of the 1<sup>st</sup> appellant, contends that having been granted leave to appeal on 27<sup>th</sup> June 2019, he filed the notice of appeal on 10<sup>th</sup> July 2019 and served it on 16<sup>th</sup> July 2019; that time began to run when leave to appeal was granted; that the court registry misplaced



the record of appeal after it was paid for on 10<sup>th</sup> September 2019, and it was served on 19<sup>th</sup> September 2019 after it was traced. In his view, therefore, the applicant's application is unmerited.

4. When the application came up for hearing on 10<sup>th</sup> July 2024, there was no attendance on behalf of the appellants, although they had been served with a hearing notice and an affidavit of service filed accordingly.
5. Ms Jan Mohamed, Senior Counsel for the applicant, told the Court that the appellants' suit before the High Court, which gave rise to the impugned ruling, was dismissed for want of prosecution in June 2024. She urged us to allow the application, as it was clear that the notice and record of appeal were filed out of time without leave.
6. We have considered the application, the response thereto, as well as the applicant's written submissions. On 9<sup>th</sup> November 2018 the High Court (Sergon, J.) ordered that the authors of the documents identified as No.6 and 9 in the appellant's bundle of documents be summoned to produce the same as exhibits in evidence. That is the order that the appellants sought to appeal from. The appellants did not have an automatic right of appeal. Under Order 43 rule 1 (3) of the Civil Procedure Rules, leave was required before an appeal from the aforesaid order was mounted.
7. There is no dispute that the appellants never sought leave of this Court to appeal out of time. The High Court merely permitted the appellants to institute an appeal before this Court. Under rule 75 (2) of the Court of Appeal Rules, 2010, a notice of appeal should be filed within fourteen (14) days from the day of delivery of the impugned judgment or order. The notice and the record of appeal were therefore filed out of time and without leave of this Court.
8. Consequently, we allow this application, with the result that this appeal is hereby struck out with costs to the applicant.

**DATED AND DELIVERED AT NAIROBI THIS 12<sup>TH</sup> DAY OF JULY 2024.**

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

.....

**JUDGE OF APPEAL**

**S. GATEMBU KAIRU, FCIArb.**

.....

**JUDGE OF APPEAL**

**L. ACHODE**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

SIGNED

**DEPUTY REGISTRAR**

