



REPUBLIC OF KENYA



KENYA LAW
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**Banking Insurance and Finance Union (Kenya) v Taifa Sacco Society Limited
(Civil Application E026 of 2022) [2024] KECA 791 (KLR) (5 July 2024) (Ruling)**

Neutral citation: [2024] KECA 791 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E026 OF 2022
W KARANJA, LK KIMARU & AO MUCHELULE, JJA**

JULY 5, 2024

**IN THE MATTER OF AN APPLICATION TO STRIKE OUT
AND/OR DEEMED WITHDRAWN THE NOTICE OF APPEAL
DATED 19TH DECEMBER, 2018**

BETWEEN

BANKING INSURANCE AND FINANCE UNION (KENYA) APPLICANT

AND

TAIFA SACCO SOCIETY LIMITED RESPONDENT

(Being an appeal from the Ruling of the Employment and Labour Relations Court of Kenya at Nyeri delivered and read in open court by the Honourable Justice Nzioki wa Makau on the 11th December, 2018 in ELRC No. 58 of 2013 Formerly Nairobi ELRC C. No. 722 of 2012)

RULING

(An application to strike out the notice of appeal dated 19th December, 2018 for failure to file and serve record of appeal within the prescribed time)

1. By a notice of motion dated 20th April 2022, Banking Insurance & Finance Union, the applicant herein, sought an order from this Court to strike out the notice of appeal filed by the respondent dated the 19th December 2018. In the alternative, the applicant craved that the said notice of appeal be deemed to have been withdrawn.
2. The grounds in support of the application are stated on the face of the application. They include inter alia that; the respondent filed the notice of appeal seeking to challenge the decision of the Employment and Labour Relations Court (ELRC) on 19th December 2018; that since that date, the respondent had not filed the record of appeal. There was no indication that the respondent would file such appeal. The



applicant therefore asked the court to either strike out the notice of appeal or in the alternative, deem the same to have been withdrawn. The applicant also asked for the cost of the application.

3. The application is unopposed.
4. During the hearing of the appeal, Mr. Mucheke appeared for the applicant. There was no appearance for the respondent despite being notified by the court of the hearing date. The applicant urged the court to allow the application on the basis of their application and the written submissions.
5. Rule 85 of the *Court of Appeal Rules 2022* provides thus:

“(1) If a party who has lodged a notice of appeal fails to institute appeal within the appointed time, that party shall be deemed to have withdrawn the notice of appeal and the court may, on its motion or on application by any other party, make such order.

(2) The party in default under sub-rule (1) shall be liable to pay the costs arising therefrom of any persons whom the notice of appeal was served.”

6. In the present application, it was clear to the Court that the respondent, after lodging the notice of appeal under Rule 77(1) of the *Court of Appeal Rules* was required to institute the appeal by filing the record of appeal within sixty days thereof as provided under Rule 84 (1) of the Rules.
7. There is no evidence that the appellant wrote to the ELRC to be supplied with certified copies of the proceedings and copied the said letter to the respondent to be entitled to an extension of time provided under Rule 84(2) of the *Court of Appeal Rules, 2022*.
8. It was evident that the respondent went to sleep. The respondent did not, therefore, institute the appeal by lodging the record of appeal within the stipulated time as required by the *Rules* of this Court. No reason has been proffered by the respondent why it failed to file the record of appeal within the required time.
9. The application therefore has merit. It is hereby allowed. The notice of appeal lodged by the respondent dated 19th December 2018 is deemed to have been withdrawn under Rule 85(1) of the *Court of Appeal Rule, 2022*. The applicant shall have the costs of the application.

DATED AND DELIVERED AT NYERI THIS 5TH 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

