



County Government of Meru v Mukiri & 6 others (Civil Application E092 of 2021) [2024] KECA 1308 (KLR) (27 September 2024) (Ruling)

Neutral citation: [2024] KECA 1308 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E092 OF 2021
W KARANJA, LK KIMARU & AO MUCHELULE, JJA
SEPTEMBER 27, 2024**

BETWEEN

THE COUNTY GOVERNMENT OF MERU APPLICANT

AND

GLADYS MUKIRI 1ST RESPONDENT

ISABEL MUNYANGE 2ND RESPONDENT

EDWARD NJUGUNA NJUKIA 3RD RESPONDENT

MOSES MWORIA 4TH RESPONDENT

STELLA IGOKI KUBAI 5TH RESPONDENT

KAGENDO JOSES 6TH RESPONDENT

CATHERINE KAREA TUTA 7TH RESPONDENT

(An application to strike out the notice of appeal dated 18th December, 2017 and lodged on 20th December, 2017 for failure to file and serve record of appeal within the prescribed time)

RULING

1. By a notice of motion dated 8th October 2021, the County Government of Meru, the applicant herein, seeks an order from this Court to strike out the Notice of Appeal filed by the respondents dated the 18th December 2017 and lodged on 20th December 2017. In the alternative, the applicant craves that the said Notice of appeal be deemed to have been withdrawn.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 respondents filed the notice of appeal seeking to challenge the decision of the Environment and Land Court (ELC) on 20th December 2018; that since that date, the respondents have not filed the



Record of Appeal. The respondents were required to have instituted their appeal within sixty (60) days of lodging the Notice of Appeal. That it has been three (3) years and nine (9) months after lodging the Notice of Appeal and the respondents have not instituted the appeal.

3. These grounds were expounded in the affidavit in support of the application sworn by Irah Nkuubi, the applicant's legal officer on 8th October 2021. Counsel for the applicant also filed submissions dated 16th June 2023, in obedience to the Court's directions given in the hearing notices served on the parties.
4. The application is unopposed as the respondents neither filed any replying affidavit nor filed submissions.
5. During the plenary hearing of the application, learned counsel Ms. Kaunyangi held brief for Mr. Muthomi for the respondents. There was no appearance for the applicants, but as they had filed submissions, the Court ruled that it would consider the application on the basis of the submissions.
6. Ms. Kaunyangi informed the Court that she had instructions to apply for an adjournment but offered no reasons why there was no replying affidavit despite the application having been served on the respondents over two (2) years earlier. The application for adjournment was declined, but counsel was informed that she was at liberty to oppose the application on points of law. She did not do so and the Court reserved the matter for ruling.
7. We have considered the application, the submissions filed in support of the same and the law. Rule 85 of the *Court of Appeal Rules, 2022* provides thus:

“If a party who has lodged a notice of appeal fails to institute the 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.”

8. In the present application, it was clear to the Court that the respondents, 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 (60) days thereof as provided under Rule 84 (1) of the *Rules*.
9. There is no evidence that the appellants wrote to the ELC requesting 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.
10. It was evident that the respondent went to slumber after filing the Notice of Appeal and did not 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 respondents as to why they failed to file the record of appeal within the required time.
11. The application, therefore, has merit and is hereby allowed. The Notice of Appeal dated 18th December 2017 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 NAKURU THIS 27TH DAY OF SEPTEMBER 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.

