



**Wamburu v Karobia (Civil Appeal (Application) 24 of 2019)  
[2024] KECA 1331 (KLR) (27 September 2024) (Ruling)**

Neutral citation: [2024] KECA 1331 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL (APPLICATION) 24 OF 2019  
S OLE KANTAI, A ALI-ARONI & JM MATIVO, JJA  
SEPTEMBER 27, 2024**

**BETWEEN**

**MARIN IGECHA WAMBURU ..... APPLICANT**

**AND**

**VICTOR MURIUKI KAROBIA ..... RESPONDENT**

*((Being an application to strike out or deem withdrawn the notice of appeal dated 29th June, 2016 arising from the ruling (Mbogholi, J.) delivered on 27th June, 2016 in H.C. Civil Appeal No.671 of 2012.))*

**RULING**

1. The application in issue is dated 28<sup>th</sup> January, 2019 and it seeks to have the notice of appeal dated 29<sup>th</sup> June, 2016, filed on 30<sup>th</sup> June, 2016, struck out or be deemed to have been withdrawn.
2. The applicant states that the ruling which the appellant intended to appeal from was delivered on 27<sup>th</sup> June, 2016 in HCCA No 671 of 2012 by Mbogholi Msagha, J. (as he then was). It is also his argument that on 15<sup>th</sup> February, 2017, the High Court confirmed availability of certified proceedings but the appellant has never instituted his appeal. The applicant terms the delay as inexcusable, prejudicial and an abuse of the court process.
3. The applicant filed submissions dated 23<sup>rd</sup> May, 2024 in support of his application but the respondent did not file any submissions despite having been served with the application and a hearing notice.
4. This matter was called on 27<sup>th</sup> May, 2024 on the virtual platform and there was no appearance despite there being proof of service of the hearing notice on the parties.
5. The background to the dispute involves a road traffic accident which occurred on 7<sup>th</sup> October, 2008. The two parties herein were in the same vehicle, with Victor Karobia (the respondent) at the wheel. Following the accident, Martin Igecha Wamburu (the appellant) blamed Karobia for negligence while



Karobia stated that he had to drive off the road to avoid a head-on collision with an unidentified vehicle that had swerved into his lane. The trial magistrate found Karobia 100% liable for the accident and awarded damages of Kshs.300,000/= as general damages and Kshs.2,200/= as special damages.

6. Victor Karobia filed an appeal to the High Court being HCCA No 671 of 2012. The court in its judgment dated 13<sup>th</sup> June, 2016, stated that it doubted the authenticity of the plaintiff's case. The court, upon assessing two different and questionable police abstract reports, stated that it did not believe that Martin Wamburu was in the vehicle at the time of the accident and even if he was, that he was not injured in the accident. The appeal was allowed with costs to the appellant. The court also made a finding that notwithstanding the success of the appeal, if the appeal had failed, the award would have been lawful and was within the range of comparable decisions thus the judgment on quantum would have been upheld.
7. We note some confusion as to what exactly the respondent in this application intended to appeal. It is clear that the High Court delivered a judgment dated 13<sup>th</sup> June, 2016 which is on the record. However, the notice of appeal states that the intended appeal is against a decision dated 27<sup>th</sup> June, 2016 and no such decision is on the record. Meanwhile, the application states that the intended appeal is against a ruling yet again dated 27<sup>th</sup> June, 2016, which ruling if it exists, is not provided, while the applicant's submissions refer to the notice of appeal as being from the judgment. We deem that these errors or omissions are not material for our current purposes and we shall proceed to determine the application to strike out the notice of appeal on the material that is before us.
8. We have considered the application, the supporting documents, and the written submissions by counsel for the applicant. The relevant provision is Rule 84, which states;

“ 84. Application to strike out notice of appeal or appeal

A person affected by an appeal may at any time, either before or after the institution of the appeal, apply to the Court to strike out the notice or the appeal, as the case may be, on the ground that no appeal lies or that some essential step in the proceedings has not been taken or has not been taken within the prescribed time.

Provided that an application to strike out a notice of appeal or an appeal shall not be brought after the expiry of thirty days from the date of service of the notice of appeal or record of appeal as the case may be.”

9. We are of the considered view that this application is merited. The appellant filed a notice of appeal which was lodged in the High Court on 1<sup>st</sup> July, 2016. The applicant annexed a letter dated 15<sup>th</sup> February, 2017 confirming that copies of the file documents were ready for collection. It is the case of the applicant that the intended appellant has never instituted an appeal to date. Indeed, there is no evidence before us that any appeal exists, more than 7 years since the necessary documents were made available to enable the intended appellant to file his appeal. This delay is inordinate and inexcusable.
10. We therefore allow this application dated 28<sup>th</sup> January, 2019 with costs to the applicant.

**DATED AND DELIVERED AT NAKURU THIS 27<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

**S. OLE KANTAI**

.....

**JUDGE OF APPEAL**



**ALI-ARONI**

.....

**JUDGE OF APPEAL**

**J. MATIVO**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

