



**Director of Lands and Urban Planning, Government of Makueni  
County & another v others & 2 others (Civil Appeal (Application)  
165 of 2019) [2024] KECA 1156 (KLR) (20 September 2024) (Ruling)**

Neutral citation: [2024] KECA 1156 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL (APPLICATION) 165 OF 2019  
DK MUSINGA, S OLE KANTAI & M NGUGI, JJA  
SEPTEMBER 20, 2024**

**BETWEEN**

**DIRECTOR OF LANDS AND URBAN PLANNING, GOVERNMENT OF  
MAKUENI COUNTY ..... 1<sup>ST</sup> APPLICANT**

**THE COUNTY GOVERNMENT OF MAKUENI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**DANIEL MAKAU MWOLOLO & OTHERS ..... 1<sup>ST</sup> RESPONDENT**

**EDWARD MUTINDA NDETEI ..... 2<sup>ND</sup> RESPONDENT**

**JAMES MUTUA MUTHOKA ..... 3<sup>RD</sup> RESPONDENT**

*(Being an application for striking out the Notice of Appeal dated 21st February  
2019 and the Record of Appeal filed on 26th April, 2019 from the ruling of the ELC  
at Makueni (Mbogo J.) delivered on 5th February, 2019 in ELC NO. 321 of 2017)*

**RULING**

1. The applicants, the Director of Lands and Urban Planning, Government of Makueni County and The County Government of Makueni have filed an application dated 13<sup>th</sup> May 2019, seeking to have the notice of appeal dated 21<sup>st</sup> February 2019 and the record of appeal dated 26<sup>th</sup> April 2019 struck out. The application is brought under rules 82, 84 and 87 of the Court of Appeal Rules, 2010. The application is based on the grounds set out on the face of the application and is supported by an affidavit sworn on 15<sup>th</sup> May, 2019 by Raphael Nzuki Nzioka, the applicants' advocate.
2. The applicants contend that a ruling was delivered on 5<sup>th</sup> February 2019 at the ELC Makueni striking out the appellants'/respondents' suit. They contend that if the respondents were dissatisfied, they ought to have filed a notice of appeal within 14 days of the decision; that they had until 19<sup>th</sup> February



- 2019 to file the notice of appeal but failed to do so; and that the notice of appeal filed on 21<sup>st</sup> February 2019 was filed outside the 14-day timeline; and the record of appeal filed on 26<sup>th</sup> April 2019 was also filed outside the 60-day statutory timeline. Further, that they were not served with the letter requesting for certified proceedings and the inordinate delay on the part of the respondents has not been explained.
3. The application is opposed. The respondents have filed an affidavit sworn by Emmanuel Mwangambo Mwagonah, the respondents' advocate, on 7<sup>th</sup> June 2019. The respondents aver that they filed a notice of appeal on 22<sup>nd</sup> February 2019, 13 days after the ruling was delivered, which they aver is in accordance with the Court of Appeal Rules. They argue that the notice of appeal was thus filed within the 14-day statutory timeline. It is their case further that the record of appeal was filed on 26<sup>th</sup> April 2019, 45 days after they filed the notice of appeal, excluding the weekends in accordance with the Court of Appeal Rules, and it was thus filed within the 60-day statutory timeline.
  4. The applicants filed written submissions dated 19<sup>th</sup> July 2019 while the respondents filed submissions dated 7<sup>th</sup> February 2020. At the hearing of the application, the applicants were represented by learned counsel, Mr. Muuo, while the respondents were represented by learned counsel, Mr. Nyanjera Asande, both of whom relied on the parties' respective submissions.
  5. We have considered the application, the affidavits in support and opposition thereto, and the submissions of the parties. The ruling that the respondents seek to appeal from was delivered on 5<sup>th</sup> February 2019. Under rule 75 of the 2010 Rules of this Court, the respondents were required to file their notice of appeal within 14 days of the 5<sup>th</sup> of February 2019, but they filed it on 22<sup>nd</sup> February 2019. The respondents did not therefore comply with the statutory timeline with respect to the filing of the notice of appeal.
  6. Further, under rule 82(1) of the Court of Appeal Rules, 2010 (now rule 84(1) of the 2022 Rules), the respondents were required to file the record of appeal within 60 days of filing their notice of appeal. The respondents have argued that they had complied with all the timelines under rule 75 and rule 84(1) because they had excluded weekends from the computation of time. The position, however, is that where a timeline under the Rules is in excess of 6 days, weekends and holidays are not excluded in the computation of time -see *Longinus Oroni Murunga v David Masika Mafumbo* [2017] eKLR. In *KCB Bank Kenya Limited v Mwandoro* (Civil Application E044 of 2021) [2023] KECA 260 (KLR) (17 March 2023) (Ruling) the Court stated that:

“In this case, since the prescribed days were 14 days, any Sundays or public holidays falling in between were not excluded days and ought to be reckoned in the computation of time.”
  7. Having considered the timelines within which the notice of appeal and the record of appeal were filed in this matter, we find that the applicants are correct in stating that the respondents did not comply with the statutory timelines for the filing of the notice of appeal and the record of appeal. Ordinarily, that would be the end of the matter and the notice of appeal and the record of appeal would be for striking out.
  8. However, the present application is brought under rule 84 of this *Court's Rules, 2010* [now rule 86 of the 2022 Rules] The rule provides that a person affected by an appeal may apply to strike the notice



of appeal or the appeal on the grounds that an essential step has not been taken. The proviso to the rule states that:

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

9. In this case, the notice of appeal was filed on 22<sup>nd</sup> February 2019, outside the 14-day statutory timeline. It was served on 25<sup>th</sup> February 2019. The applicants seek to strike it out by their application dated 15<sup>th</sup> May 2019, an application brought more than 60 days after service of the notice of appeal.
10. This Court has held that parties are bound by the mandatory proviso to rule 84 of the 2010 Rules, and failure to comply with the 30 day timeline renders an application thereunder defective – see *Total Kenya Limited v Rueben Mulwa Kioko* [2018] eKLR; *Esther Onyango Ochieng v Transmara Sugar Company* [2020] eKLR; *Salama Beach Hotel Limited & 4 Others v Kenyariri & Associates Advocates & 4 Others* [2016] eKLR. In light of the holding by the Court in the above matters, the application to strike out the notice of appeal is unsustainable.
11. Which leaves the question of whether the record of appeal should be struck out. The record of appeal was filed on 26<sup>th</sup> April 2019, and the present application filed on 14<sup>th</sup> May 2019. The application to strike out the record of appeal was thus filed within the 30-days timeline provided under the proviso to rule 84.
12. As noted earlier, the respondents submit that the record of appeal was filed within time, contending that weekends and public holidays are excluded in the computation of time. As we have found earlier in this ruling, this is not an argument that can assist the respondents. They did not file their record of appeal, and indeed their notice of appeal, within the timelines stipulated under the rules. While the application with respect to the notice of appeal is caught up by the proviso to rule 84, the application with respect to the record of appeal is unassailable.
13. The respondents had the option of seeking extension of time to file the notice and record of appeal out of time under rule 4 of this Court’s Rules but they did not avail themselves of this option. Accordingly, we find that the application dated 15<sup>th</sup> May 2019 is merited, and we allow it with costs to the applicants.

**DATED AND DELIVERED AT NAIROBI THIS 20<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

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

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**JUDGE OF APPEAL**

**S. ole KANTAI**

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**JUDGE OF APPEAL**

**MUMBI NGUGI**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

**Signed**



**DEPUTY REGISTRAR.**

