



**Makau & another v Kilolo (Miscellaneous Civil Application
E521 of 2023) [2024] KECA 1173 (KLR) (20 September 2024) (Ruling)**

Neutral citation: [2024] KECA 1173 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
MISCELLANEOUS CIVIL APPLICATION E521 OF 2023
LA ACHODE, JA
SEPTEMBER 20, 2024**

BETWEEN

RICHARD MULWA MAKAU 1ST APPLICANT

THADEUS MWILU MATHEKA 2ND APPLICANT

AND

NDULULU KILOLO RESPONDENT

(Being an application for enlargement of time to appeal against the Judgment at ELC Court Nairobi (Murigi J) dated 13th July, 2022 in Nai. ELC Appeal No. 16 of 2019)

RULING

1. Richard Mulwa Makau and Thadeus Mwilu Matheka (the applicants) filed the application dated 11th May 2023 under Rule 4 of this Courts Rules, seeking leave to file an appeal out of time from the judgment dated 13th July 2023. They also sought that the memorandum of appeal be deemed duly filed and served upon the respondent, upon payment of the requisite filing fees.
Ndululu Kilolo is the respondent.
2. The Registrar of this Court sent the applicants a Hearing Notice via email on the 1st of February 2024. The email indicated that their application would be disposed of by way of written submissions, and gave the hearing date as the 12th of February 2024.
3. Subsequently, on the 6th of February 2024, the Registrar sent them an email with directions for the disposal of the application as follows:
 1. The applicants to serve the respondent with the application within 1 day and file a return of service.
 2. The respondent to file and serve replying affidavit within two days and file a return of service.



3. The applicants to file and serve a further affidavit (if necessary) together with written submission within two days and file a return of service.
 4. The respondent upon being served by the applicant, to file and serve written submissions within two days and file a return of service.
 5. All submissions should be limited to 3 pages; line spacing 1.5, font size 12; font- Times New Roman.
 6. Parties to file and serve the List of Authorities and Case Digest separately alongside submissions.
 7. The hearing date is as per the Notice earlier on issued.
4. The applicants have not complied with the directions given to date, and it is apparent that they have lost interest and abandoned the application. Rule 58 (6) of the [Court of Appeal Rules 2022](#) provides as follows:

“Subject to the provisions of sub-rule (1), (2), (3), (4) and (5), the court shall have discretion to dismiss an application or an appeal where one or both parties fail to appear or comply after being served, or cannot be traced at the parties’ last known address.”

In the premise, the application dated 11th May 2023, is marked as dismissed under Rule 58 (6). No order as to costs.

DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF SEPTEMBER, 2024.

L. ACHODE

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

Deputy Registrar

