



**Olonana Limited v Rafiki Limited (Civil Application E094 of 2023)
[2024] KECA 1520 (KLR) (25 October 2024) (Ruling)**

Neutral citation: [2024] KECA 1520 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION E094 OF 2023
MA WARSAME, PM GACHOKA & WK KORIR, JJA
OCTOBER 25, 2024**

BETWEEN

OLONANA LIMITED APPLICANT

AND

RAFIKI LIMITED RESPONDENT

(An application seeking to strike out a notice of appeal against the judgment of the Environment and Land Court at Kilgoris (Washe, J.) dated 20th September 2023 in ELC Cause No. 34 of 2021)

RULING

1. The applicant has filed a notice of motion dated 31st October, 2023 seeking to strike out the respondent's Notice of Appeal filed on 26th September, 2024 and served on 2nd October, 2023.
2. The grounds in support of the Notice of Motion as stated on the face of the application and deposed in the supporting affidavit of Wairui Waijango, a Finance Director with the applicant are that:
 - a. Judgment was delivered on 20th September, 2023 in favour of the applicant entitling him to quiet and exclusive possession of 20 acres within the suit property in line with the lease agreement dated 30th March, 2018
 - b. Even though the notice of appeal was filed on time, it is incurably defective and cannot be amended because firstly; the notice of appeal which was sent via email is neither dated, sealed or signed by the Deputy Registrar contrary to Rule 77(1) and (2) of the Court of Appeal Rules hence there is no proof it was lodged or received by the Deputy Registrar. Secondly, the respondent has not specified which part of the appeal it intends to appeal contrary to Rule 77(3) of the COA Rules 2022.



3. In opposition to the application, the respondent has filed a Reply ing Affidavit dated 16th November, 2023 sworn by its direct or Uwe Herdees, who deposed that:
 - a. The court assessed the notice of appeal and request for typed proceedings via an email sent on 27th September, 2023 and sent the payment details to its advocates. Its advocates paid via M-pesa, sent proof of payment to the court and the court sent back the documents on 2nd October, 2023 via mail and deemed them as duly filed.
 - b. The respondent's advocates immediately served the applicant with the notice of appeal on the same date but later requested the court for the requisite receipts and the duly received documents for administrative purposes and the court sent back stamped documents on 4th October 2023
 - c. The application is in bad faith and the respondent is keen to pursue its appeal
4. When the matter came up before us, the applicant was represented by learned counsel Mr. Kere while learned counsel, Mr. Kipkoech appeared for the respondent.
5. In a brief highlight, Mr. Kipkoech admitted that at the time of serving the notice received from the registry, it had not received the endorsed notice however he emphasized that the respondent has already filed its appeal before this court serialised as Civil Appeal No. 23 of 2024. He contended that the notice of appeal was filed on time and the grounds of appeal are stated in their Memorandum of Appeal. On his part Mr. Kere maintained that the application was merited and that an appeal lodged using a faulty notice of appeal was incompetent and had no legs to stand on.
6. We have considered the application, submissions made on behalf of the respective parties and the law. We have also looked at the annexed Notice of Appeal, which is subject of the application for our determination. It is clear the Notice of Appeal was filed within the statutory period of 14 days, which was to expire on 4th October, 2023. Secondly, the payment receipt annexed by the respondent shows that the Notice of Appeal, together with the letter requesting for typed proceedings were paid for on 29th September, 2023.
7. It is clear beyond doubt that the appeal against the impugned Judgment was filed with a Memorandum of Appeal, which clearly and correctly states the grounds being appealed against by the respondent. We don't understand what the applicant is complaining about, as the grounds of appeal are clear, precise and to the point of grievance by the appellant. Consequently, the application has no merit and it's dismissed with no orders as to costs.

DATED AND DELIVERED AT NAKURU THIS 25TH DAY OF OCTOBER 2024.

M. WARSAME

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JUDGE OF APPEAL

M. GACHOKA CIARB., FCIARB

.....

JUDGE OF APPEAL

W. KORIR

.....

JUDGE OF APPEAL



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

Signed

DEPUTY REGISTRAR

