



Ndegwa & 2 others (Suing on own Behalf and on Behalf of all the Interested Persons who Established, Worked and Evicted from Tea Farms in Nyayo Tea) v Attorney General & another (Civil Appeal 4 of 2019) [2024] KECA 1716 (KLR) (21 November 2024) (Ruling)

Neutral citation: [2024] KECA 1716 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL 4 OF 2019
S OLE KANTAI, JW LESSIT & A ALI-ARONI, JJA
NOVEMBER 21, 2024**

BETWEEN

CHARITY WANJIRU NDEGWA 1ST APPLICANT

CECILAI WANGECHI GAKUHI 2ND APPLICANT

PERIS NYAMBURA WAHOME 3RD APPLICANT

**SUING ON OWN BEHALF AND ON BEHALF OF ALL THE INTERESTED
PERSONS WHO ESTABLISHED, WORKED AND EVICTED FROM TEA
FARMS IN NYAYO TEA**

AND

THE HON ATTORNEY GENERAL 1ST RESPONDENT

NYAYO TEA ZONES DEVELOPMENT CORPORATION 2ND RESPONDENT

*(An application for striking out the record of appeal from the ruling of the
Employment and Labour Relations Court at Nyeri (Nzioki wa Makau, J.)
delivered on 21st May, 2018 in ELRC Constitutional Petition No. 10 of 2017)*

RULING

1. The 2nd applicant, by a Notice of Motion dated 29th January 2019, brought pursuant to rules 42(1), 43 (1), 82 (1) and 84 of the *Court of Appeal Rules (2010) (the Rules)* is seeking to have the record of appeal struck out for having been filed out of time and without leave. The grounds for the application are on the face of the application and in the affidavit in support thereof sworn by Peter K. Korir of even date.
2. When the application was called for hearing on the 11th November, 2024, only Mr. Mubea the learned counsel for the applicant was present. The counsel for the 2nd respondents/appellants and for the 1st



respondent were absent even though duly served with the hearing notice on the 22nd October, 2024. None of them filed any response or submissions to the application. Mr. Mubea on the other hand filed written submissions dated 31st October, 2024, upon which he sought to rely, and which he briefly highlighted.

3. We have considered the application, the supporting affidavit and the submissions filed by the applicant. The application has been brought in the main under rule 84 of the 2010 Rules, then applicable which provides:

“ 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.” [Emphasis added]

4. We note that the record of appeal was lodged on 10th January 2019, 167 days late bearing in mind that the respondents filed the notice of appeal on 29th May, 2018. It was served upon the applicant on 18th January, 2019, one day out of time without leave. This application was filed on 29th January, 2019, within the 7 days prescribed under the rules. We have satisfied ourselves that indeed the application has been brought within the time prescribed under rule 84 (currently rule 86).
5. The respondent/appellants have not filed any response, therefore, the applicant’s contention is not controverted. No attempt was made to correct the anomaly by seeking leave to extend time. It is trite that parties are bound by their pleadings. In the circumstances we find merit in this application and order as follows:
 - i. The application dated 29th January 2019 is allowed;
 - ii. the record of appeal lodged in Court on 10th January 2019 be and is hereby struck out; and
 - iii. the applicant will have the costs of the application.

DATED AND DELIVERED AT NYERI THIS 21ST DAY OF NOVEMBER, 2024.

S. ole KANTAI

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JUDGE OF APPEAL

J. LESIIT

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JUDGE OF APPEAL

ALI-ARONI

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JUDGE OF APPEAL

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

Signed



DEPUTY REGISTRAR

