



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
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Shihua Industry Alliance Company Limited v Kenya Wildlife Service & 3 others (Civil Application E016 of 2024) [2024] KECA 1762 (KLR) (6 December 2024) (Ruling)

Neutral citation: [2024] KECA 1762 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CIVIL APPLICATION E016 OF 2024
KI LAIBUTA, LA ACHODE & GV ODUNGA, JJA
DECEMBER 6, 2024**

BETWEEN

SHIHUA INDUSTRY ALLIANCE COMPANY LIMITED APPLICANT

AND

KENYA WILDLIFE SERVICE 1ST RESPONDENT

THE COUNTY CONSERVATOR 2ND RESPONDENT

THE HON ATTORNEY GENERAL 3RD RESPONDENT

THE KENYA REVENUE AUTHORITY 4TH RESPONDENT

(Being an application to strike out the Notice and Memorandum of Appeal against the Ruling and Orders of the Environment and Land Court of Kenya at Mombasa (L. L. Naikuni, J.) dated 9th May 2022 in E.L.C.A No. 23 of 2019)

RULING

1. By a Notice of Motion dated 6th March 2024, the applicant, Shihua Industry Alliance Company Limited, sought orders to strike out the 1st respondent's notice of appeal dated 11th May 2022 and the memorandum of appeal with costs on the grounds, inter alia, that the 1st respondent, Kenya Wildlife Service, has "... failed to prosecute the appeal preferred herein for a period exceeding one year and six months contrary to mandatory and express provisions of the law."
2. The applicant's Motion was anchored on rule 86 of the Court of Appeal Rules supported by the annexed affidavit of Salama Mbauro sworn on 6th March 2024 to which the 1st respondent replied vide the affidavit of Leon Kalisto, its legal officer, sworn on 14th June 2024 stating, inter alia: that the deponent to the applicant's supporting affidavit, and who purported to have power to represent the applicant together with one Peter Liu, were held in Mombasa High Court Civil Case No. E065 of 2023 to be fraudsters; and that the subject matter of the appeal lies outside the jurisdiction of this Court.



- 3. Notwithstanding the matters aforesaid, learned counsel for the 1st respondent, Mr. Ochieng, made an application pursuant to rule 83(1) of the Court of Appeal Rules to have the 1st respondent’s notice of appeal marked as withdrawn with no orders as to costs.
- 4. Opposing the 1st respondent’s application, learned counsel for the applicant, Mr. Egunza, submitted that the applicant was entitled to prosecute its Motion for orders as prayed.
- 5. To our mind, no useful purpose would be served by arguments over an application in respect of which the impugned notice of appeal is sought to be withdrawn. Having carefully considered the record as put to us, the applicant’s Motion dated 6th March 2024, the affidavits in support thereof and in reply thereto, the rival submissions by learned counsel, the cited authorities and the law, we hereby order and direct that the 1st respondent’s notice of appeal dated 11th May 2022 be and is hereby marked as withdrawn with no orders as to costs. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 6TH DAY OF DECEMBER, 2024.

DR. K. I. LAIBUTA C.Arb, FCIArbs.

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JUDGE OF APPEAL

L. ACHODE

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JUDGE OF APPEAL

G. V. ODUNGA

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

