



Wanjau v County Government of Uasin Gishu (Civil Application E008 of 2022) [2023] KECA 359 (KLR) (31 March 2023) (Ruling)

Neutral citation: [2023] KECA 359 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CIVIL APPLICATION E008 OF 2022
F SICHALE, FA OCHIENG & LA ACHODE, JJA
MARCH 31, 2023**

BETWEEN

JOHN MICHAEL WANJAU APPLICANT

AND

THE COUNTY GOVERNMENT OF UASIN GISHU RESPONDENT

(An application to strike out Notice of Appeal filed on 28th February, 2019 against the Judgment of the Environment and Land Court at Eldoret (A. Ombwayo, J.) delivered on 21st February, 2019 in ELC Case No. 285 of 2013)

RULING

1. By a Notice of Motion dated July 25, 2022 the applicant John Michael Wanjau, has asked the Court to strike out the Notice of Appeal dated February 27, 2019. The Notice of Appeal was filed in court on February 28, 2019.
2. It was the understanding of the applicant that the appeal ought to have been filed within 60 days from the date when the notice of appeal was filed.
3. As no appeal had been filed by the time when this application was made, which was more than three (3) years after the notice of appeal was filed, the applicant invited this Court to strike the said notice of appeal.
4. In the case of *Mae Properties Limited vs Joseph Kibe & Another, Civil Appeal No 201 of 2016*, this Court held that failure to comply with the timelines set for the filing of an appeal, invites sure consequences. The prescribed legal consequence for failure to institute an appeal within 60 days was that the offending party shall be deemed to have withdrawn his notice of appeal. This is what the court said in that case:

' It is safe to say, therefore, that a notice of appeal dies a natural death after the expiry of 60 days unless its life should sooner be extended by lodgment of the appeal within 60 literal



days, or such longer time as may still amount to 60 days by operation of the proviso to Rule 82(1), on exclusion.

It may also be resuscitated or vivified by an order extending time for the lodging of the appeal, properly made by a single Judge on a Rule 4 application.

Absent those supervening circumstances, the notice of appeal dies in the eyes of the law.'

5. In answer to the application, the respondent, County Government of Uasin Gishu, filed a replying affidavit which was sworn by SK LEL, who was its County Attorney.
6. The respondent acknowledged that the Deputy Registrar of the Environment and Land Court, (which is the court from whose decision the intended appeal arose), issued a Certificate of Delay dated April 7, 2022.
7. Pursuant to the proviso to Rule 82(1) of the *Court of Appeal Rules*, the period which had been certified by the Deputy Registrar as having been required by the trial court, to prepare and to supply the record of proceedings, would be excluded when computing the 60 days within which the appeal ought to have been filed.
8. The respondent attributes its failure to bring the appeal within the 60 days to;
 - a. The Covid-19 Pandemic, which consumed more than a year;
 - b. The County Government being overwhelmed by the restructuring of the Government after 2022 elections; and
 - c. The failure to disburse funds from the National Government.
9. As the respondent indicated, it was in the year 2020 when the Country, Kenya, was struck by the global Covid-19 pandemic. Even though the said pandemic may have 'consumed' about one year, during the period when the wheels of justice were slowed down, we find that the respondent has not satisfied us that the pandemic explains the delays subsequent to April 7, 2022, when the Deputy Registrar issued the Certificate of Delay.
10. This Court takes judicial notice of the fact that the National Elections in Kenya were held on August 9, 2022. That was more than 4 months after the Certificate of Delay was issued, signaling that the record of proceedings, which was required for the filing of the appeal, was ready.
11. In effect, the appeal ought to have been filed more than two (2) months before the elections. Accordingly, we find that the process of re-organisation of the County Government, after the 2022 general elections cannot explain the delay in lodging the appeal.
12. As regards the alleged failure by the National Government to disburse funds, we find that the respondent did not provide any explanation that could establish the nexus between the said failure, to file the appeal timeously. In a nutshell, the respondent lacked an answer to the merits of the application.
13. However, the respondent pointed out that any application for the striking out of a notice of appeal ought to have been made within 30 days from the date when the notice of appeal was served.
14. The applicant should have moved the court within 30 days. As the application was filed outside the time-limit set in law, the same is incompetent. The same is therefore struck out.

We make no order as to costs.

Dated and delivered at Nakuru this 31st day of March, 2023.



F. SICHALE

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JUDGE OF APPEAL

F. OCHIENG

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JUDGE OF APPEAL

L. ACHODE

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

