



**Vomorono Limited v Saikwa & another (Civil Application
280 of 2019) [2023] KECA 909 (KLR) (24 July 2023) (Ruling)**

Neutral citation: [2023] KECA 909 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION 280 OF 2019
MA WARSAME, KI LAIBUTA & JM MATIVO, JJA
JULY 24, 2023**

BETWEEN

VOMORONO LIMITED APPLICANT

AND

MOSES KIPLANGAT SAIKWA 1ST RESPONDENT

JOHN MTAY SAIKWA 2ND RESPONDENT

(Being an application to strike out the Notice of Appeal against the Orders of the High Court of Kenya at Nairobi (M. W. Muigai, J.) dated 5th June 2018 in Succession Cause No. 599 of 1986)

RULING

1. The applicant, Vomorono Limited, has approached this Court vide its Notice of Motion dated 22nd August 2019 supported by the annexed affidavit of its director, Silas Kibet Simatwo, sworn on 22nd August 2019 seeking orders to strike out the 1st respondent's notice of appeal filed on 19th June 2018. The applicant also prays that the costs of the application be borne by the 1st respondent.
2. The applicant's Motion is made on 6 grounds, namely: that the learned Judge delivered a ruling dated 5th June 2018 on various applications by the parties in succession Cause No. 599 of 1986; that, dissatisfied, the 1st respondent (Moses Kiplangat Saikwa) filed a notice of appeal on 19th June 2018; that by a letter dated 19th June 2018, he requested for certified copies of the ruling and proceedings; that, on 20th June 2019, the Deputy Registrar of the Family Division notified the parties that the proceedings were ready for collection; and that the 1st respondent failed to file his intended appeal within the prescribed period.
3. The 1st respondent opposes the applicant's Motion vide the replying affidavit of Burton Isindu, his learned counsel, sworn on 26th September 2019 deposing that the applicant's Motion was premature; that the record of appeal was duly filed on 26th August 2019 in Civil Appeal No. 411 of 2019, which



was within time as demonstrated in the certificate of delay issued on 1st July 2019; that the record has since been served on the applicant; and that the applicant’s Motion is time-barred and ought to be struck out with costs.

4. Learned counsel for the applicant and for the respondents have also filed written submissions in support of their respective clients’ cases, the contents of which we need not pronounce ourselves at length in view of the glaring misperception of statute law and procedure on the part of the applicant, which render comprehensive judicial scrutiny inconsequential and merely academic.
5. We need to point out right at the outset that, the applicant’s Motion offends the mandatory proviso to rule 86 of the Court of Appeal Rules, having been filed more than fifteen (15) months from the date of service of the notice of appeal. It is noteworthy that the 1st respondent’s notice of appeal was duly filed within the time prescribed by rule 77(2) of the Rules of this Court, namely within 14 days from the date of the impugned decision; that the notice was served on the applicant the very next day on 20th June 2018; and that the applicant’s Motion was filed on 23rd August 2019 (more than 15 months next following). To that extent, the Motion before us is incompetent.
6. Having found that the 1st respondent’s notice of appeal satisfies the mandatory requirements of rules 77(2) and 79(1) of the Court of Appeal Rules, 2022; and that the applicant’s Motion offends the mandatory proviso to rule 86, we come to the inescapable conclusion that the applicant’s Notice of Motion dated 22nd August 2019 is incompetent and is hereby struck out with costs to the respondents. Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 24TH DAY OF JULY, 2023.

M. WARSAME

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JUDGE OF APPEAL

DR. K. I. LAIBUTA

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JUDGE OF APPEAL

J. MATIVO

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JUDGE OF APPEAL

I certify that this is a true copy of the original

signed

DEPUTY REGISTRAR

