



REPUBLIC OF KENYA



KENYA LAW
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**Gikonyo v Ndura (Civil Application E044 of 2021)
[2023] KECA 1612 (KLR) (21 July 2023) (Ruling)**

Neutral citation: [2023] KECA 1612 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E044 OF 2021
J MOHAMMED, LK KIMARU & AO MUCHELULE, JJA
JULY 21, 2023**

BETWEEN

JOHN NJENGA GIKONYO APPLICANT

AND

STEPHEN KINUTHIA NDURA RESPONDENT

(Being an application to strike out the notices of appeal dated 12th April 2021 and lodged on 6th May 2021 and 18th May 2021 from the judgment of the High Court of Kenya at Kerugoya (L.W. Gitari, J.) dated 9th April 2021 in Civil Appeal No. 20 of 2016)

RULING

1. The background of this application is that three sisters occupied one acre of rice holding No. 1992. They had a tenant card and a licence issued by the National Irrigation Board. They had entered into an agreement to lease the acre to their brother, the applicant, John Njenga Gikonyo, for the 2012/2013 season. The agreement was entered into on 14th February 2012. The sisters then unilaterally wrote to the applicant terminating the agreement. They proceeded to lease the land to the respondent, Stephen Kinuthia Ndura for Kshs.35,000/= for the same season.
2. When the respondent sought to take over the land, he found the applicant in occupation. The respondent demanded the refund of his money. At that point the three sisters filed a report at Wang'uru Police Station, following which the applicant was arrested and charged with forcible detainer contrary to section 91 of the Penal Code, and tried at the Principal Magistrate's Court at Wang'uru. The respondent was a witness in the trial. The applicant was acquitted under section 210 of the Criminal Procedure Code.
3. The applicant sued the respondent and the Attorney General claiming damages for false imprisonment and malicious prosecution. He also claimed special damages of Kshs.70,000/=. The suit was opposed. The trial court dismissed the suit with costs, following hearing.



4. Being aggrieved, the applicant appealed to the High Court which, after hearing, overturned the decision of the trial court. It was found that malicious prosecution had been proved, and an award of KShs.400,000/= in general damages and KShs.70,000/= in special damages was made.
5. The respondent was dissatisfied and sought to appeal to this Court. He lodged two notices of appeal, one on 6th May 2021 and the other on 12th May 2021. Both were dated 12th April 2021.
6. Before us is a notice of motion dated 3rd June, 2021, brought under Rule 84 of the Court of Appeal Rules, 2010 in which the applicant seeks to have the two notices of appeal struck out for having been filed and served outside the statutory time of 14 days; and that, the existence of two notices of appeal in respect of the same judgment and/or decree be found to be an abuse of the process of the court. The application was supported by the grounds and the sworn affidavit of the applicant. It was stated that, following the judgment on 9th April 2021 in his favour, the respondent had filed two notices of appeal; one dated 12th April 2021 and filed and served on 6th May 2021, and the second one dated 12th April 2021, filed on 18th May 2021 and served on 20th May 2021. It was the applicant's case that the two notices were incompetent as both had been filed outside the stipulated time of 14 days after the judgment.
7. It was submitted that the first notice had been filed 27 days after the judgment, and no leave had been obtained to file out of time or to extend time; and that the second notice had been filed 40 days after the judgment.
8. The application was duly served on the respondent, but no response was filed. There was no attendance on his behalf during the hearing.
9. We have carefully considered the motion in its entirety, and the submissions by learned counsel for the applicant. It is indeed not in dispute that the impugned judgment was rendered on 9th April 2021. Two notices, both dated 12th April 2021, were lodged, one on 6th May 2021 and the other on 18th May 2021. The first notice was filed after 27 days and the second notice was filed after 40 days, counting from the date when the judgment was delivered by the High Court.
10. Rule 77(1) and (2) of the [Court of Appeal Rules](#), 2022 (the Rules) provides as follows:-

“77

- (1) A person who desires to appeal to the Court shall give notice in writing, which notice shall be lodged in two copies, with the registrar of the superior court.
- (2) Each notice under sub-rule (1) shall, subject to rules 84 and 97, be lodged within fourteen days after the date of the decision against the decision for which appeal is lodged.”

11. Rule 86 of the [Rules](#) provides as follows:-

“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—

- a. that no appeal lies; or
- b. 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 after the date of service of the notice of appeal or record of appeal, as the case may be.”

12. The applicant was served with the first notice of appeal on 6th May 2021, thus within the 30 days stipulated under the proviso to Rule 86.
13. In *Mae Properties Limited -v- Joseph Kibe & Another* [2017]eKLR, this Court discussed the importance of parties keeping to the timelines provided under the Rules of this Court, and rendered itself in the following terms:-

“We have said on numerous occasions that the Rules of Court exist for the purpose of orderly administration of justice before this Court. The timelines appointed for doing of certain things and taking of steps are indispensable to the proper adjudication of appeals that come before us. The *Rules* are expressed in clear and unambiguous terms and they command obedience.

Failure to comply with the timelines invites some consequences.”
14. We find that the respondent did not obey the Rules in regard to the time to lodge the notice of appeal following the judgment delivered on 9th April 2021 that had aggrieved him. He, in so doing, invited the consequence of the striking out of his notice of appeal.
15. Secondly, to file two notices of appeal following the same judgment would, in our view, be an abuse of the process of the Court.
16. For these reasons, we allow the applicant’s application dated 3rd June 2021 and strike out the two notices of appeal dated 12th April 2021 and filed on 6th May 2021 and 18th May 2021, respectively.
17. We make no order as to costs.

DATED AND DELIVERED AT NYERI THIS 21ST DAY OF JULY, 2023.

JAMILA MOHAMMED

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JUDGE OF APPEAL

L. KIMARU

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JUDGE OF APPEAL

A. O. MUCHELULE

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

