



**Cyber Access Limited v National Land Commission (Civil Application
15 of 2020) [2022] KECA 365 (KLR) (18 February 2022) (Ruling)**

Neutral citation: [2022] KECA 365 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CIVIL APPLICATION 15 OF 2020
SG KAIRU, A MBOGHOLI-MSAGHA & P NYAMWEYA, JJA
FEBRUARY 18, 2022**

BETWEEN

CYBER ACCESS LIMITED APPLICANT

AND

NATIONAL LAND COMMISSION RESPONDENT

*(An application to strike out the notice of appeal from the judgment and
decree of the High Court of Kenya at Mombasa (E.K. Ogola, J.) delivered on
23rd January 2020 in High Court Constitutional Petition No. 43 of 2018)*

RULING

1. In its application dated 19 February 2020, Cyber Access Limited, the applicant, seeks an order that the notice of appeal by National Land Commission, the respondent, dated 23rd of January 2020 and lodged in the High Court at Mombasa on 24 January 2020 be struck out.
2. Despite service of the hearing notice, there was no appearance for the respondent during the virtual hearing before the Court on 11th November 2021. Neither did the respondent file any replying affidavit or submissions in the matter.
3. Urging the application before us, learned counsel for the applicant Mr. Amuga in highlighting his written submissions dated 15th October 2021 referred to the affidavit in support of the application and stated that the judgment of the High Court the respondent intends to challenge was delivered on 23rd January 2020; that on 24th January 2020 the respondent lodged its notice of appeal; that the notice of appeal was however not served on his firm on behalf of the applicant until 6th February 2020, which, he maintained, was outside the 7 days period stipulated under Rule 76 of the Court of Appeal Rules; and that the notice of appeal is therefore incompetent and should be struck out.



4. We have considered the application, to which as already noted there was no opposition. As stated, the impugned judgment was delivered on 23rd January 2020. Under Rule 75 of the *Court of Appeal Rules*, a person desiring to appeal the decision had 14 days within which to lodge a notice of appeal with the registrar of the superior court.

The respondent's notice of appeal dated 23rd January 2020 which is exhibited to the supporting affidavit has a faint stamp date on the top that reads 24th January 2020. It is not clear from the exhibit whether that stamp, is a stamp of the lower court as all there is, is a date. However, at the foot, the notice of appeal bears the signature of the Deputy Registrar High Court of Kenya at Mombasa below a date of 30th January 2020 when it is indicated, based on the printed words, that it was lodged in the Court of Appeal at Mombasa. Going by date of lodging the notice of appeal against which the signature of the Deputy Registrar of the High Court appears, we take it that the date of 30th January 2020 is the date when the notice was lodged. That, therefore, was within the time stipulated under Rule 75.

5. Rule 77(1) of the Court of Appeal Rules provides that:

“(1) An intended appellant shall, before or within seven days after lodging notice of appeal, serve copies thereof on all persons directly affected by the appeal.”

6. The applicant states that the notice of appeal was served on 6th February 2020. Taking, as we do, 30th January 2020 as the date when the notice of appeal was lodged, it follows that service of the notice of appeal, having been done on 6th February 2020, was within the time stipulated under Rule 77(1).

7. Consequently, we find no merit in this application. It is hereby dismissed with no orders as to costs as the respondent took no steps to oppose it.

8. This ruling shall apply, mutatis mutandis, to Mombasa Civil Application No. 16 of 2020 between Habo Agencies Limited and the National Land Commission as the circumstances giving rise to the application therein dated 19th February 2020 are the same.

Orders accordingly.

DATED AND DELIVERED AT MOMBASA THIS 18TH DAY OF FEBRUARY 2022.

S. GATEMBU KAIRU, FCIArb

.....
JUDGE OF APPEAL

A. MBOGHOLI MSAGHA

.....
JUDGE OF APPEAL

P. NYAMWEYA

.....
JUDGE OF APPEAL

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

DEPUTY REGISTRAR

