



REPUBLIC OF KENYA



KENYA LAW
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**Kahinga v Mutura (Civil Application 22 of 2020)
[2022] KECA 428 (KLR) (4 March 2022) (Ruling)**

Neutral citation: [2022] KECA 428 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION 22 OF 2020
RN NAMBUYE, MSA MAKHANDIA & S OLE KANTAI, JJA
MARCH 4, 2022**

BETWEEN

JAMES MURIMI KAHINGA APPELLANT

AND

BENSON KAMAU MUTURA RESPONDENT

(Being Notice of Motion for striking out the Notice of Appeal dated 14th February 2020 and filed on 17th February 2020 in Murang'a in ELCA Case No. 10 of 2019)

RULING

1. Before us is a notice of motion dated 27th February 2020 brought under Rule 75 and 84 of the [Court of Appeal Rules](#). The motion seeks that this Court do strike out the Notice of Appeal dated 14th February 2020 and filed on 17th February 2020 by the respondent in Murang'a ELC Case No. 10 of 2019.
2. The same is based on the grounds that the judgment was delivered on 19th December 2019 in which the respondent's appeal was dismissed with costs. That the notice of appeal was however filed on 17th February 2020. That the notice of appeal was thus filed out of time contrary to Rule 75(2) of the Court of Appeal Rules and without first seeking extension of time within which to file the same. That accordingly, the said notice of appeal ought to be struck out with costs pursuant to Rule 84 of the Court of Appeal Rules.
3. The motion is further supported by the affidavit of S.N. Kirubi, learned counsel of the applicant dated 27th February 2020. The affidavit is a rehash of the grounds already stated above. The Respondent did not file any response to the application despite a request to do so by the Deputy Registrar of this court vide a letter dated 4th March 2021.
4. The applicant filed written submissions in support of the application in which he reiterated that the respondent's appeal having been dismissed on 19th December 2019 and even if Rule 3 (a) of the Court



of Appeal Rules was invoked to avoid the period of Christmas vacation, between 21st December 2019 and 14th January 2020 under Rule 75 (2), the respondent should have filed the notice of appeal latest by the 28th January 2020. However the Respondent only filed the notice on 14th February 2020 long after the lapse of time and did not even bother to invoke Rule 4 of the Court of Appeal Rules to apply for the extension of time. That the applicant had filed the instant application within time limit of 30 days from the date of service upon them of the notice of appeal as required by law.

5. We have considered the application, supporting affidavit and submissions by the applicant's counsel as well as the law.

Rule 75 of the Court's Rules provides as follows:

75. Notice of appeal

- (1) Any person who desires to appeal to the Court shall give notice in writing, which shall be lodged in duplicate with the registrar of the superior court.
- (2) Every such notice shall, subject to rules 84 and 97, be so lodged within fourteen days of the date of the decision against which it is desired to appeal."

6. The applicant's contention that the respondent filed the notice of appeal out of time has not been controverted at all by the respondent. Accordingly the respondent did not satisfy the prerequisite of Rule 75 of the rules thereby making the notice of appeal a ripe candidate for striking out on account of incompetency.

Rule 84 of the Court Rules provides that;

"An application to strike out a notice of appeal or an appeal shall not be brought after the expiry of thirty days from the date of service of the notice of appeal or record of appeal as the case may be."

7. This being an application for striking out the notice of appeal premised on the ground that the same was filled way out of the prescribed fourteen (14) statutory days and the applicant having filed this application dated 27th February 2020, which application was filed within the thirty-day statutory window, the application is merited.

8. We echo what this Court stated in the case of *Mae Properties Limited Vs. Joseph Kibe & Another* [2017] eKLR thus:

"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 the doing of certain things and taking of certain steps are indispensable to the proper adjudication of the appeals that come before us. The Rules are expressed in clear and unambiguous terms and they command obedience."

9. Consequently, we are satisfied that the respondents failed to file the notice of appeal within the prerequisite period of fourteen statutory days thus rendering the subsequent appeal incompetent. Accordingly, the notice of appeal and any record of appeal that may have been filed premised on the same notice of appeal, be and is hereby struck out with costs to the applicant.

DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF MARCH, 2022.

R. N. NAMBUYE

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**JUDGE OF APPEAL
ASIKE–MAKHANDIA**

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**JUDGE OF APPEAL
S. ole KANTAI**

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

