



REPUBLIC OF KENYA



KENYA LAW
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**Muse v Wepukhulu & 10 others (Civil Application 111 of 2020)
[2022] KECA 503 (KLR) (28 April 2022) (Ruling)**

Neutral citation: [2022] KECA 503 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION 111 OF 2020
PO KIAGE, M NGUGI & F TUIYOTT, JJA
APRIL 28, 2022**

BETWEEN

MAURICE ANTHONY WANJALA MUSE APPLICANT

AND

JOHN SIMIYU WEPUKHULU 1ST RESPONDENT
ISSAC WAFULA WANAKACH 2ND RESPONDENT
OMOTO DAVID ALIAS OMOTO PHILIP 3RD RESPONDENT
SOLOMON WANYONYI KHAEMBA 4TH RESPONDENT
ABRAHAM CHANGE WEKESA 5TH RESPONDENT
PENANA MTONYI 6TH RESPONDENT
MARY AMBOGO 7TH RESPONDENT
NELLY SIKHOYA BALANGA 8TH RESPONDENT
ANNE NEKESA WEKESA 9TH RESPONDENT
JOTHAM SIMITA 10TH RESPONDENT
WYCLIFFE AIRO SIRIKWA 11TH RESPONDENT

*(Being an application to strike out the notice of appeal in the Environment
& Land Court at Kitale dated 11th August, 2020 in Case No. 17 of 2011)*

RULING

1. By the motion on notice dated 16th September 2020, brought under Rule 84 of the Rules of Court, the applicant prays that the notice of appeal dated 11th August 2020 and served on 9th September 2020



be struck out for having been served contrary to the orders of this Court made on 7th August 2020 and Rule 77(1) of the *Court of Appeal Rules*.

2. The grounds on the face of the motion state that the respondents had on application been granted 14 days from 7th August 2020 within which to serve the notice of appeal, but they did so on 9th September 2020, which was way after the stipulated time. The applicant's supporting affidavit sworn on 16th September 2020 makes the same assertions on oath. There has been no replying affidavit or any answer to the application. Indeed, the respondents' advocates were absent when the motion came up for hearing on 14th December 2021 even though they were duly served on 7th December 2021 with notice of the hearing. They also did not file submissions as directed.
3. Given the uncontroverted evidence that the respondents, despite being granted reprieve by Nambuye, J.A who extended time for them to file their notice of appeal, neglected or failed to serve the same within the days given, the application before us is unanswerable. The failure to serve the notice of appeal within the time given was a failure to take an essential step within the meaning and intendment of Rule 84.
4. In addition, the late service constitutes a default of a condition given by the Court for the validation of the notice of appeal, leaving it incompetent.
5. In the result, the motion is granted and the notice of appeal dated 11th August 2020 be and is hereby struck out with costs.
6. The applicant shall have the costs of the motion.

DATED AND DELIVERED AT KISUMU THIS 28TH DAY OF APRIL, 2022.

P. O. KIAGE

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JUDGE OF APPEAL

MUMBI NGUGI

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JUDGE OF APPEAL

F. TUIYOTT

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JUDGE OF APEAL

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

Signed

DEPUTY REGISTRAR

