



**Mohamed v Commissioner of Police & another (Civil Application
134 of 2018) [2022] KECA 954 (KLR) (29 July 2022) (Ruling)**

Neutral citation: [2022] KECA 954 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION 134 OF 2018
DK MUSINGA, F SICHALE & S OLE KANTAI, JJA
JULY 29, 2022**

BETWEEN

GEDO ABDULAHI MOHAMED APPLICANT

AND

COMMISSIONER OF POLICE 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

(An Application to strike out or withdraw the Notice of Appeal lodged from the Judgment of the High Court of Kenya at Kericho (Marete, J.) dated 4th June 2015.)

RULING

1. Before us is a motion dated 31st October 2018, brought pursuant to the provisions of Sections 1A, 1B and 3B of the *Civil Procedure Act* and Order 51 Rule (1) of the *Civil Procedure Rules*, Sections 3A & 3B of the *Appellate Jurisdiction Act*, Rules 82 and 83 of the Court of Appeal Rules and all other enabling provisions of the law in which Gedo Abdulahi Mohammed (the applicant herein), seeks the striking out/withdrawal of the Notice of Appeal lodged by the respondents herein on 23rd June 2015. We wish to state in passing that the provisions of the *Civil Procedure Act* and the Rules made thereunder are not applicable in this Court.
2. The motion is supported by the grounds on the face of the motion and an affidavit sworn by the applicant who deposed, inter alia, that the respondents had filed a Notice of Appeal on 23rd June 2015 against the judgment of Marete, J. dated 4th June 2015 and that they have never lodged any appeal to date.
3. There was no response on part of the respondents.
4. It was submitted for the applicant that the respondents' delay to file the Memorandum and Record of Appeal was deliberate, inordinate and inexcusable, especially when the same was at the expense of the



applicant who has had to wait for the fruits of his judgment for almost 8 years now, and further, that there had been no explanation for the long delay from the respondents.

5. We have carefully considered the motion, the grounds thereof, the supporting affidavit, the applicant's submissions, the cited authorities and the law.
6. It is indeed not in dispute that the Notice of Appeal herein was filed on 23rd June 2015. No other action has been taken by the respondents from 23rd June 2015, when the Notice of Appeal was filed. There has been no action on the part of the respondents for a period of close to 6 years and no explanation has been forthcoming from the respondents as to why they have not prosecuted their appeal. The applicant is certainly entitled to enjoy the fruits of his judgment. It is indeed a common maxim of equity that equity aids the vigilant and not the indolent.
7. Accordingly, we are satisfied that the Notice of Appeal dated 23rd June 2015 is ripe for striking out and we hereby strike it out with costs to the applicant.
8. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 29TH DAY OF JULY, 2022.

D. K. MUSINGA (P)

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JUDGE OF APPEAL

F. SICHALE

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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

