



**IN THE COURT OF APPEAL**

**AT ELDORET**

**(CORAM: OUKO, (P), KARANJA & MUSINGA, J.J.A.)**

**CIVIL APPLICATION. NO. 89 OF 2018**

**BETWEEN**

**UNGA GROUP LIMITED.....APPLICANT**

**AND**

**JONATHAN M. WAIGANJO.....RESPONDENT**

*(An application to strike out the Notice of Appeal dated 1/8/2018 and lodged on 2/8/2018*

*from the Judgment/Decree of the Employment & Labour Relations Court at Eldoret*

*(Hon. Justice M. Mbaru, J.) delivered on 12<sup>th</sup> July, 2018*

*in*

*ELRC Cause No. 231 of 2017)*

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**RULING OF THE COURT**

On 12<sup>th</sup> day of July, 2018, M. Mbaru, J. of the Employment and Labour Relations Court, finding no merit, dismissed the respondent’s claim against the applicant for wrongful termination of employment. The respondent was dissatisfied and evinced an intention to challenge on appeal that decision by lodging a notice of appeal on 2<sup>nd</sup> August, 2018 and serving it on the applicant on 30<sup>th</sup> August, 2018. To this day, the appeal has not been filed.

In the circumstances, and pursuant to, among other enabling provisions of the Court’s Rules, **Rules 84**, the applicant now seeks, in this application, that the notice of appeal be struck out with costs.

According to **Rule 84**, any 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 that no appeal lies or 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 from the date of service of the notice of appeal or record of appeal as the case may be”.**

We need not explain this clear expression of judicial policy, that the courts have inherent jurisdiction to control proceedings before them, ensure that the court process is not improperly used and remove any obstacles that are likely to delay the just disposal of the case.

The respondent, who was duly served in accordance with the Court of Appeal Covid-19 Practice Note of 21<sup>st</sup> April, 2020, did not file any response to this application.

We are satisfied that, in the first place, the notice of appeal was filed and served out of time and without leave.

Secondly, it is nearly 3 years since the decision the respondent sought to challenge was made. After filing, out of time, a one-page notice of appeal, the respondent went to sleep. That is not how judicial business is transacted. The respondent clearly has lost interest in his pursuit for justice, to challenge before this Court the decision that had aggrieved him. We cannot help him.

The applicant has complied with the proviso to **Rule 84**, and brought this application within 30 days from the day it was served with the notice of appeal.

For these reasons, we allow the application and order that the notice of appeal be and is hereby struck out with costs.

**Dated and delivered at Nairobi this 29<sup>th</sup> day of January, 2021.**

**W. OUKO, (P)**

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**JUDGE OF APPEAL**

**W. KARANJA**

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**JUDGE OF APPEAL**

**D.K. MUSINGA**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**