



IN THE COURT OF APPEAL

AT NAKURU

(CORAM: KOOME, M'INOTI & MURGOR, J.J.A.)

CIVIL APPLICATION NO. NYR 95 OF 2018

BETWEEN

SPENCON (K) LIMITED.....APPLICANT

AND

HEMA INVESTMENTS LTD.....1ST RESPONDENT

KERICHO MUNICIPAL COUNCIL.....2ND RESPONDENT

(Application to deem withdrawn a notice of appeal dated against the ruling and order of the High Court of Kenya at Nakuru (Mulwa, J.) dated 14th July 2016

in

HCCC No. 227 of 1997)

RULING OF THE COURT

On 18th May 2012, the **High Court of Kenya** at Nakuru (**Emukule, J.**) dismissed a suit for want of prosecution filed by **the 1st respondent, Hema Investments (K) Ltd** against the **applicant, Spencon (K) Ltd** and **the 2nd respondent, Kericho Municipal Council**, the predecessor in title of the Kericho County Government. The 1st respondent applied to set aside the order for dismissal but its application was dismissed by Mulwa, J. vide a ruling dated 14th July 2016. On 25th July 2016, the 1st respondent filed a notice of appeal, evincing an intention to appeal against the said ruling by Mulwa, J.

On 23rd July 2018, the applicant filed the motion now before us seeking an order to deem the notice of appeal as withdrawn because the 1st respondent has failed to lodge the record of appeal within the prescribed time.

In its supporting affidavit and written submissions, the applicant contends that even though the 1st respondent applied for certified copies of proceedings on 26th July 2016, the proceedings were typed and have all along been ready but the 1st respondent has not bothered to pay for, or collected the same.

Although the respondents were served with the application and the hearing notice on 24th February 2021, neither of them has filed a replying affidavit or written submissions as directed. It is more than four years since the applicant filed its notice of appeal and although the applicant deposes that the proceedings have been ready, the 1st respondent had not filed the record of appeal. As this Court explained in **John Mutai Mwangi v. Mwenja Ngure & 4 Others [2016] eKLR, rule 83** of the rules of this Court, which empowers the Court to deem a notice of appeal as withdrawn, is a case-management devise to clean up the court records.

It enables the Court to strike out notices of appeal that are not followed by a record of appeal within the prescribed time and is intended to discourage the filing of notices of appeal frivolously or in jest, without any intention of filing an appeal.

The suit that gave rise to this application was filed way back in 1997, some 24 years ago. We are satisfied that this is an appropriate case in which to deem a notice of appeal as withdrawn.

Accordingly, we allow the application dated 28th July 2018 and deem the respondent's notice of appeal dated 25th July 2016 as withdrawn under **rule 83** of the **Court of Appeal Rules**. The applicant will have the costs of the application.

Dated and delivered at Nairobi this 19th day of March, 2021.

M. K. KOOME

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JUDGE OF APPEAL

K. M'INOTI

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JUDGE OF APPEAL

A. K. MURGOR

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR