



IN THE COURT OF APPEAL

AT NAKURU

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

CIVIL APPLICATION NO. NYR 11 OF 2020

BETWEEN

TAPRANDICH CHUMO.....APPLICANT

AND

JAMES KIPLIMO ROTICH.....RESPONDENT

(Application to deem withdrawn a notice of appeal dated 22nd August 2017 against the judgment and decree of the Environment and Land Court at Kericho (Onyango, J.) dated 30th May 2017

in

ELCC No. 45 of 2017 (O.S)

RULING OF THE COURT

The motion by **the applicant, Taprandich Chumo**, dated 12th January 2020 prays for an order to deem the respondent's notice of appeal dated 22nd August 2017 as withdrawn under **rule 83** of the Rules of this Court. The applicant deposes in support of the application that the **Environment and Land Court at Kericho (Onyango, J.)** rendered a judgment in her favour on 30th May 2017. On 22nd August 2017 the respondent lodged a notice of appeal evincing intention to appeal against the said judgment and served the same on the applicant's advocates on 23rd August 2017. Subsequently the respondent successfully applied before the trial court for stay of execution of the judgment.

The applicant further deposes that it is now more than three years and the respondent has not filed the record of appeal as required by the Rules of the Court. Accordingly, the applicant urges us to deem the respondent's notice of appeal as withdrawn for failure to file the record of appeal within the prescribed time.

Pursuant to the Court of Appeal Practice Direction to mitigate the COVID 19 pandemic, the Court directed the application to be heard through written submissions without appearance of the parties. After service, on 24th February 2012, of a hearing notice and directions on filing of written submissions both parties filed their written submissions and the respondent filed grounds of opposition to the application.

In her written submissions, the applicant reiterated that the respondent, who is enjoying an order of stay of execution, has gone to sleep and failed to file the record of appeal within the prescribed 60 days from the date of lodging the notice of appeal. The applicant added that the respondent filed the notice of appeal 85 days from the date of the judgment instead of the prescribed 14 days. She relied on the ruling of this Court in **John Mutai Mwangi v. Mwenja Ngure & 4 Others [2016] eKLR** and submitted that deeming a notice of appeal as withdrawn is a case management devise to clean up the court records by striking out notices of appeal that are not followed by a record of appeal within the prescribed time, and further to ensure that notices of appeal are not filed frivolously or in jest without any intention of filing an appeal.

The respondent's grounds of opposition to the application is a study in meaningless deployment of words and phrases. The respondent states that the application is "an abuse of the process of the court", is "misconceived", "bad in law", "scandalous", "frivolous and vexatious", "misguided", "misconceived" and "meant to deny the respondent a fair hearing", "intended to delay or derail the appeal", is "*malafides*" and "lacks merit both in fact and law", and is "premature", in "bad taste" and "meant to deny the respondent justice". The respondent adds that his appeal raises triable issues and that he was "incapacitated from filing the intended appeal since the proceedings and judgment took too long to be typed."

In his written submissions the respondent states that the proceedings were supplied and that his advocate tasked a clerk to file the record of

appeal but he inadvertently failed to do so. He added that mistakes of his advocate should not be visited on him and urged us to enlarge time for him to file the appeal.

We have carefully considered this application. The respondent did not file a replying affidavit to explain what efforts he made to file the record of appeal and when he made such efforts, if any. His statements, which have no probative value, are made in submissions. There is no application before the court for extension of time. In short, the respondent concedes that he did not file the record of appeal within the prescribed time. Even after being served with the application to deem the notice as withdrawn, he neither applied for extension of time nor filed the record of appeal. To make matters worse, he admits he received the proceedings.

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 12th January 2020 and deem the respondent's notice of appeal dated 22nd August 2017 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