



IN THE COURT OF APPEAL

AT MALINDI

(CORAM: NAMBUYE, ASIKE-AKHANDIA & KANTAL, J.J.A.)

CIVIL APPLICATION NO. 30 OF 2019

BETWEEN

**FABIO MARELI 1ST APPLICANT
SONGHAI INVESTMENTS LIMITED2ND APPLICANT
MOHAMED ISAAC BACHANI3RD APPLICANT

AND

DANIELLE SCOLARO RESPONDENT**

(Being an application to deem the Order dated 7th March, 2019 from the Judgment of the Environment and Land Court of Kenya at Malindi (O. Angote, J.) dated 21st February, 2019

in

ELC No. 72 of 2009)

Consolidated with

Civil Application No. 28 Of 2019

**FABIO MARELI 1ST APPLICANT
SONGHAI INVESTMENTS LIMITED2ND APPLICANT
MOHAMED ISAAC BACHANI..... 3RD APPLICANT

AND

DANIELLE SCOLARO..... RESPONDENT**

Consolidated with

Civil Application No. 29 Of 2019

**FABIO MARELI1ST APPLICANT
SONGHAI INVESTMENTS LIMITED2ND APPLICANT
MOHAMED ISAAC BACHANI3RD APPLICANT**

AND

DANIELLE SCOLARO RESPONDENT

Consolidated with

Civil Application No. 31 Of 2019

FABIO MARELI 1ST APPLICANT

SONGHAI INVESTMENTS LIMITED 2ND APPLICANT

MOHAMED ISAAC BACHANI3RD APPLICANT

AND

DANIELLE SCOLARO RESPONDENT

RULING OF THE COURT

When Civil Application No. 30 of 2019 came up for hearing our attention was drawn to a letter (e-mail) dated 4th March, 2021 from Kamoti Omollo & Company Advocates (info@kamotiomolliadvocates.com) to our Deputy Registrar stating, *inter alia*, that there were related applications being **Civil Application No. 28, 29 and 31** all of 2019 and the same should be dealt with together. We perused the applications and noted that they were all by the same applicants (**Fabio Maeli, Songhai Investments Limited and Mohamed Isaac Bachani**) against the respondent, **Danielle Scholaro**. In the event we consolidated the applications and this is the ruling on the four applications.

The motions (they are similar in nature word for word) are brought under **Rules 42, 77, 83 and 84 of the Court of Appeal Rules** and the applicants move the Court for orders:

“THAT the Notice of Appeal dated 7th March 2019 be deemed to have been withdrawn and/or be struck out on the grounds that the following essential steps as required under the Court of Appeal Rules have not been taken:

i. The Plaintiff/Respondent who has lodged an Appeal has effected the service of the Notice of Appeal out of time on the Applicants being parties which are directly affected by the intended Appeal; and

ii. The Plaintiff/Respondent has failed to lodge an Appeal within the appointed time of 60 days from the date of delivery of the Judgment when time to lodge an appeal is not extended by the reason of the Plaintiff/Respondent having failed to effect the service of the Letter to the Deputy Registrar requesting for proceedings and the Judgment on the Applicants being parties which are directly affected by the Intended Appeal.”

Vincent Omollo, Advocate on record for the defendants in the **Environment and Land Court (“ELC”)** – the applicants herein, depones that Judgment was delivered on 21st February, 2019 by ELC; that the respondent had, through a law firm **Kanyi J. & Company, Advocates** filed a Notice of Appeal on 8th March, 2019 giving intention to appeal that decision; that Notice of Appeal was served on the applicants’ law firm on 27th March, 2019; that the respondent was obligated to lodge a Memorandum of Appeal within 60 days from the date of Judgment unless copies of proceedings were applied for and copy of such letter served on the applicant; that no such letter had been served and 60 days period had since expired without Memorandum of Appeal being lodged as required and that for those failures the Notice of Appeal dated 7th March, 2019 be deemed to have been withdrawn and/or that it be struck out.

Annexed to the Motions is a copy of the Judgment of ELC dated 21st February, 2019 and Notice of Appeal dated 7th March, 2019 and lodged with the Registrar on 8th March, 2019.

The respondent did not file a replying affidavit to any of the Motions.

An appellant who intends to appeal to this Court from a decision of the High Court is required by **Rule 75** of the **rules of this Court** to lodge a Notice of Appeal within 14 days of the date of the decision and, by **rule 77**, he must serve the same upon persons affected by the appeal within 7 days of its lodgement. He must file a Record of Appeal within 60 days unless time is exempted as stated in the affidavit.

We are told here that after the Judgment of the ELC on 21st February, 2019 a Notice of Appeal dated 7th March, 2019 followed and it was served outside the time required by the rules. We are also told by the applicants, without challenge, that no Record of appeal has been filed as required by the rules. In those circumstances it is proper that we deem the Notice of Appeal dated 7th March, 2019 as withdrawn or, in the alternative, the same is hereby struck out. The applicants will have costs of the Motions.

DATED AND DELIVERED AT NAIROBI 23RD THIS DAY OF APRIL, 2021.

R.N. NAMBUYE

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JUDGE OF APPEAL

ASIKE-MAKHANDIA

.....

JUDGE OF APPEAL

S. ole KANTAI

.....

JUDGE OF APPEAL

I certify that this is a true

copy of the original.

Signed

DEPUTY REGISTRAR