



**IN THE COURT OF APPEAL**

**AT NAKURU**

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

**CIVIL APPLICATION NO. 16 OF 2019**

**BETWEEN**

**JOSEPH SANTIAN.....APPLICANT**

**AND**

**CHEMOIWA OLE SAYIALEL.....RESPONDENT**

**(An application for to strike out the Record of Appeal filed on**

**10th January 2019 in Civil Appeal No. 1 of 2019 in respect of the**

**Order of the High Court at Narok (M. N. Kullow, J.) delivered on 27th**

**September 2018 in E.L.C Cause No. 323 of 2017 formerly Kisii E.L.C. No. 103 of 2014.)**

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**RULING OF THE COURT**

1. The applicants' Notice of Motion dated 13th February 2019 seeks the striking out of the record of appeal filed by the respondent on 10th January 2019 in *Civil Appeal No. 1 of 2019*. The respondent, being dissatisfied with the decision of **Kullow, J.** delivered on 27th September 2018, filed a notice of appeal on 12th October 2018. He subsequently filed the record of appeal on 10th January 2019 and served it on 14th January 2019.
2. The applicant stated in his affidavit in support of the application that the notice of appeal was never served, contrary to **rule 77** of this **Court's Rules** which requires that the notice be served within 7 days after filing.
3. That is not all. The respondent did not serve upon the applicant the letter requesting for proceedings; and the impugned record of appeal was served upon the applicant's former advocates, Kiplenge and Kurgat, although the applicant had filed a notice of change of advocates and brought on board **M/s Leona Morintat Advocates** in place of M/s Kiplenge & Kurgat Advocates.
4. Although the respondent's Advocates, **Ochengo-Onduso & Company**, were served with a hearing notice on 25th February 2021 and directed to file written submissions within seven (7) days because the application would be disposed of in that mode in view of the Covid-19 restrictions, the respondent did not comply. Consequently, this application is not contested.
5. **Rule 77(1)** of this **Court's Rules** requires that a notice of appeal be served within seven days from the date of its filing. In this application the notice of appeal was not served at all, the applicant stated, and that averment has not been controverted. The record of appeal was also wrongly served.
6. Under **rule 82(1)** a record of appeal ought to be filed within sixty (60) days of the date of lodging the notice of appeal. But where an application for a copy of the proceedings has been made within thirty (30) days of the date of the impugned decision and a copy of the letter bespeaking the proceedings has been served upon the respondent, such time as was required for the preparation of the proceedings may be excluded in the computation of time.
7. In this application, the record of appeal was filed outside the sixty days' period and the respondent had never been served with a copy of the letter requesting for the proceedings.

8. For all these reasons, we allow the application, with the consequence that the record of appeal filed on 10th January 2019 in Civil Appeal No. 1 of 2019 is hereby struck out. The respondent shall bear the costs of the application.

**DATED AND DELIVERED AT NAIROBI THIS 19<sup>TH</sup> DAY OF MAY, 2021.**

**W. OUKO, (P)**

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**JUDGE OF APPEAL**

**D. K. MUSINGA**

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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**