



IN THE COURT OF APPEAL

AT NYERI

(CORAM: KARANJA, ASIKE-MAKHANDIA & MURGOR, J.J.A.)

CIVIL APPLICATION NO. 18 OF 2017

BETWEEN

NANCY WAIRIMU KIBUI.....APPLICANT

AND

PETER WACHIRA NJOROGE.....1ST RESPONDENT

MICHAEL GACHIRI NJOROGE.....2ND RESPONDENT

JAMES WACHIRA WAMBUGU.....3RD RESPONDENT

JULIUD KIRUTU GACHIRI.....4TH RESPONDENT

(An Application for striking out notice of appeal dated 29th March, 2016 from the Judgment of the High Court of Kenya at Nyeri (A. Ombwayo, J.) dated 23rd March, 2016

in

ELC No. 141 of 2008)

RULING OF THE COURT

Nancy Wairimu Kibui was the defendant in Nyeri HCCC No. 141 of 2008 whereby she had been sued by the four plaintiffs who are the respondents in the appeal. Having lost the suit, she filed a Notice of Appeal before this Court’s registry at Nyeri on 1st April, 2016. Apparently, the said notice was not served on the respondents in the appeal as required under **Rule 77(1)** of the Rules of this Court.

According to Kelvin Mogeni learned counsel for the respondents, he was served by a notice to attend a case management conference dated 23rd January, 2017 by the Deputy Registrar of this Court on 25th January, 2017. Upon receipt of the notice, he dispatched his clerk to the court registry and that is when they discovered that the appellant had actually filed an appeal but they had never been served with the notice of appeal as commanded by the Rules of this Court.

Those are the circumstances that prompted Mr. Mogeni on behalf of the respondents to file the Notice of motion dated 23rd February, 2021 seeking the striking out/dismissal of the Notice of appeal for failure to serve the same on the respondents pursuant to **Rule 77(1)** of the Court of Appeal Rules.

In his affidavit in support of the application sworn on even date, Mr. Mogeni repeats the background leading to the filing of the application as outlined above. There is no response to the application from the respondent. There is also no response to the hearing notice from this Court which was served on counsel on record for the appellant (respondent herein) on 20th May, 2021. The application is in the circumstances not opposed. There is therefore, no contestation that the notice of appeal was not served as required under **Rule 77(1)** of the Court of Appeal Rules.

Accordingly, we find the application before us merited. We allow it with costs to the applicant/respondents in the appeal.

DATED AND DELIVERED AT NAIROBI THIS 9TH DAY OF JULY, 2021.

W. KARANJA

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JUDGE OF APPEAL

ASIKE-MAKHANDIA

.....

JUDGE OF APPEAL

A.K. MURGOR

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR