



**Rono (suing as the personal representative of the Estate of Eunice
Chepnetich Ngasura (Deceased) v Ngasura & another (Civil Application
127 of 2020) [2021] KECA 226 (KLR) (26 November 2021) (Ruling)**

Neutral citation: [2021] KECA 226 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION 127 OF 2020
DK MUSINGA, HM OKWENGU & MSA MAKHANDIA, JJA
NOVEMBER 26, 2021**

BETWEEN

**BERNARD KIBET RONO (SUING AS THE PERSONAL REPRESENTATIVE
OF THE ESTATE OF EUNICE CHEPNGETICH NGASURA
(DECEASED) APPLICANT**

AND

**TAPNYOBII CHEBII NGASURA 1ST RESPONDENT
PHILEMON ROTICH ALIAS DAVID 2ND RESPONDENT**

*(An application to strike out the notice of appeal dated 22nd May 2018 against
the Judgment and Decree of the Environment and Land Court at Kericho
delivered by J. M. Onyango, J. on 16th May 2018 in ELC Case No. 28 of 2014)*

RULING

1. By an application dated 9th June 2020, the applicant seeks an order to strike out the notice of appeal dated 22nd May 2018, or in the alternative the said notice of appeal be deemed as withdrawn with costs to him.

The application is premised on grounds that pursuant to the trial court's judgment that was delivered on 16th May 2018, the respondents filed a notice of appeal on 22nd May 2018 and served it on the applicant on 24th May 2018 but since then the respondents have not filed the memorandum of appeal within the statutory period of sixty (60) days or at all.

2. In response, the respondents do not deny that they have not filed the memorandum of appeal. They however argue that under rule 84 of this Court's Rules, the application ought to have been filed within thirty days from the date of service of the notice of appeal but was filed almost two years after such service. They therefore urged this Court to deem the notice of appeal as withdrawn with costs to them.



3. In the circumstances of this matter, the respondents' interpretation of rule 84 is not correct. Under rule 82 of this Court's Rules, an appeal should be instituted by lodging in the appropriate registry within sixty days of filing the notice of appeal a memorandum of appeal and the record of appeal. An application to strike out a notice of appeal for failure to lodge the appeal within the prescribed period of sixty days cannot be expected to be filed within thirty days of filing the notice of appeal. The proviso to rule 84 cannot be invoked in such a scenario.
4. In this application, the respondents just sat back and failed to lodge the appeal without any reason. It is clear to us that they are not interested in pursuing any appeal, yet when the applicant moves to strike out the notice of appeal they are saying that the application is defective.
5. In the circumstances, we allow the application and order that the notice of appeal dated 22nd May 2018 be and is hereby deemed as withdrawn with costs to the applicant.

DATED AND DELIVERED AT NAKURU THIS 26TH DAY OF NOVEMBER, 2021.

D. K. MUSINGA, (P)

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JUDGE OF APPEAL

HANNAH OKWENGU

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JUDGE OF APPEAL

ASIKE-MAKHANDIA

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR

