



**Banking, Insurance and Finance Union (Kenya) v Barclays Bank of Kenya Limited  
(Civil Appeal E332 of 2020) [2021] KECA 230 (KLR) (5 November 2021) (Ruling)**

Neutral citation: [2021] KECA 230 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL E332 OF 2020  
MA WARSAME, HA OMONDI & JW LESSIT, JJA  
NOVEMBER 5, 2021**

**BETWEEN**

**BANKING, INSURANCE AND FINANCE UNION (KENYA) ..... APPELLANT**

**AND**

**BARCLAYS BANK OF KENYA LIMITED ..... RESPONDENT**

*(An application to strike out the Notice of Appeal dated 29th July, 2019 against the judgement of the E.L.R.C court at Nairobi (J.B Ongaya, J) dated 26th July, 2019 in (E.L.R.C. No. 1597 of 2015))*

**RULING**

1. Barclays Bank of Kenya Limited (the Respondent) is seeking to have the Notice of Appeal filed by Banking, Insurance and Finance Union (Kenya) (the Appellant) dated 26<sup>th</sup> July, 2019 and filed on 30<sup>th</sup> July, 2019 to be struck out. The application was brought under Rules 80 and 87 of the *court of appeal rules*. The grounds of the application are that since the date of filing the Notice of Appeal and the request for certified copies of the proceedings, the Appellant has failed to file the record of appeal, and if it has, it has not served the Respondent with the same. In addition, it is contended that it has taken a period of over one and a half (1<sup>1/2</sup>) years since the Notice of Appeal was filed but the Appellant has not filed and served its record of appeal. That the successful litigant in the lower court has been denied the fruits of its success since 1<sup>st</sup> March 2013, that the delay is inordinate and the notice is ripe for striking out. The application was supported by the affidavit of one Tom Odero, the Respondent's National Secretary.
2. The Appellant filed a replying affidavit sworn on 8<sup>th</sup> April 2021 by one Vilas Odhiambo, its Head of Employment Relations. He inter-alia deposes that after being dissatisfied with the judgement of the lower court, they filed an application for stay of execution and a ruling was delivered on 25<sup>th</sup> October



2019 allowing the application on condition that they deposit the decretal sum of Kshs. 8,203,999 in court within fifteen (15) days from the date of the ruling.

3. Consequently, the Appellant deposited the decretal sum in the court's bank account and wrote to the Deputy Registrar on 7<sup>th</sup> November, 2019 informing the court of the same. That on 2<sup>nd</sup> June, 2020 their advocates sent a follow up letter requesting for a copy of the typed proceedings and judgement. The Appellant contended that in accordance with Rule 82(1) of the Court of Appeal Rules 2010, where a request for typed proceedings has been made the time for filing the Record of Appeal shall commence upon delivery of the typed proceedings is made to the intended Appellant and that as of the date of the replying affidavit, they had not received a copy of the proceedings and judgement hence could not prepare the record of appeal in accordance with Rule 87(1) of this Court's rules.
4. The Respondent filed written submissions and its list of authorities dated 24<sup>th</sup> June 2021 while the Appellant did not file any written submissions.
5. We have considered the application, the replying affidavit, the Respondent's submissions, the cited authorities and the law. Although the Respondent did not cite Rule 84 of this Court's rules, it is the basis upon which an application for striking out a Notice or Record of appeal can be made. It provides:

“A person affected by an appeal may at any time, either before or after the institution of the appeal, apply to the court to strike out the notice or the appeal, as the case may be, on the ground that no appeal lies or that some essential step in the proceedings has not been taken within the prescribed time.

Provided that an application to strike out a notice of appeal or an appeal shall not be brought after the expiry of thirty days from the date of service of the Notice of Appeal or record of appeal as the case may be”

6. We note that the Notice of Appeal sought to be struck out was filed on 30<sup>th</sup> July 2019. Rule 77(1) of the rules requires that it be served upon the Respondent within seven (7) days after it is lodged in court. The Respondent did not raise any issue with the period of service of the Notice of Appeal and it is therefore presumed that it was served within time. That being the case, then the application herein was filed in October 2020 after a period of over one year from the date the Notice of Appeal was filed. Considering the proviso to Rule 84 in light of the circumstances herein, we find that the Respondent did not comply with the proviso when it filed this application one year after the Notice of Appeal was served upon it. That renders the application defective.
7. In the case of *Pravin Vora T/A Vora Construction Vs Synresins Ltd, Nairobi Civil Application No. 254 Of 2016 (2017) eKLR* Kihara Kariuki, PCA, Makhandia & Ouko JJ. A inter-alia held as follows:

“While interpreting rule 84 of this court's rules “Based on the foregoing provision, an applicant can seek an order striking out a Notice of Appeal or the appeal on three grounds. Firstly, that no appeal lies; or secondly, that an essential step in the proceedings has not been taken; or thirdly, that some essential step has not been taken within the prescribed time. However, such an application must be brought within thirty days from the date of service of the Notice of Appeal or record of appeal”
8. The Respondent's contention that the Appellant has lost interest on the appeal cannot stand having in mind the circumstances herein where the Appellant deposited the decretal sum in court within the stipulated time and has been requesting for proceedings but the same are yet to be supplied. We are satisfied that the delay has not been caused by the Appellant and that the reasons given by the Appellant justifies the delay in filing the record of appeal within the stipulated time.



9. In the circumstances, we dismiss the application dated 21<sup>st</sup> October, 2020 with no orders as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 5<sup>th</sup> DAY OF NOVEMBER, 2021**

**M. WARSAME**

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**JUDGE OF APPEAL**

**H. OMONDI**

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**JUDGE OF APPEAL**

**J. LESIIT**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

