



IN THE COURT OF APPEAL

AT ELDORET

(CORAM: MURGOR, SICHALE & KANTAI, J.J.A.)

CIVIL APPLICATION NO. 81 OF 2018

BETWEEN

ESTHER JELAGAT NGENY.....1ST APPLICANT

CHRISTOPHER KIPLAGAT YEGO2ND APPLICANT

AND

PETER CHEPKOCHOI MITEI1ST RESPONDENT

BARABARA KIPRUGUT ARAP TANUI2ND RESPONDENT

ISAIAH KIMUROR TANUI.....3RD RESPONDENT

(An application to strike out or withdraw the notice of appeal from the Ruling of the *Environment and Land Court of Kenya at Eldoret (Munyao, J.)* dated 26th June, 2014 **in E.L.C. No. 193 of 2013**)

RULING OF THE COURT

In a ruling delivered on 26th June, 2014 **Munyao Sila, J.** struck out the **plaint in Environment and Land Court E & L No. 193 of 2013** after finding that the suit was *res judicata*, amongst other findings. A notice of appeal dated 10th July, 2014 was filed in that court but it does not appear as if much followed that action.

The applicants have asked us in the Motion on notice said to be brought under **rules 82, 83 and 84** of the **rules of this Court** and **Sections "1A and 1B Civil Procedure Act"** to deem the said notice of appeal to have been withdrawn. In grounds in support of the Motion and in an affidavit of the 1st applicant **Esther Jelagat Ngeny** sworn at Eldoret it is said amongst other things that the respondents have failed to serve the said notice on the applicants; that no appeal has been filed and it is over 60 days since the date of the notice of appeal and the respondents continue to enjoy a stay of execution order granted by the trial court and that delay in instituting an appeal is inordinate and unreasonable.

Rule 77 of the rules of this Court ("the rules") requires that a notice of appeal be served within 7 days of its lodgment.

Rule 82 of the rules makes provision for institution of appeals while **rule 83** provides for situations where the appellant fails to institute an appeal within the required time.

We are told that the intended appellants have filed a notice of appeal; they did not serve it on the applicants contrary to the rules; there is no evidence that proceedings were applied for and it is over 60 days since notice of appeal was filed. In the premises we agree with the applicants that the notice of appeal be and is hereby deemed as withdrawn under **rule 83 of the rules**. The applicants will have costs of the Motion.

Dated and delivered at Nairobi this 7th day of August, 2020.

A.K. MURGOR

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JUDGE OF APPEAL

F. SICHALE

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JUDGE OF APPEAL

S. ole KANTAI

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR