



**IN THE COURT OF APPEAL**

**AT ELDORET**

**(CORAM: OKWENGU, J. MOHAMMED & KANTAL, J.J.A.)**

**CIVIL APPLICATION NO. 36 OF 2019**

**BETWEEN**

**PETER KAGUNZA ADAJI.....APPLICANT**

**AND**

**SIKUKU MARTIN MAIYO.....1ST RESPONDENT**

**MARGARET CHESANG MAIYO.....2ND RESPONDENT**

*(An application seeking to strike out the Notice of Appeal from the Judgment of the Environment and Land Court of Kenya at Kitale (Njoroge, J.) delivered on 20th December, 2017*

**in**

**ELC Case No. 35 of 2016)**

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**RULING OF THE COURT**

On 20th December, 2017 **Mwangi Njoroge, J.**, sitting at the Environment and Land Court at Kitale, delivered a Judgment where he found in favour of the plaintiff (the applicant here). A counter-claim by the 2nd respondent was dismissed. The 2nd respondent being dissatisfied with those findings lodged a Notice of Appeal against the whole Judgment on 17th January, 2018.

The applicant, **Peter Kagunza Adaji** has brought a Motion before us said to be under **rules 83 and 84** of the **rules of this Court** where it is prayed that the said Notice of Appeal be struck out and we are asked to award costs of the Motion to the applicant. In grounds in support of the Motion and in a Supporting Affidavit by **David O. Teti**, the lawyer for the applicant, it is stated that the respondents have failed to institute an appeal within 60 days from the date the Notice of Appeal was lodged; that the Notice of Appeal should be deemed as withdrawn; that there was no letter bespeaking proceedings or such letter, if any, was not copied to the applicant and the respondents cannot therefore benefit from the proviso to **rule 82** of the said **rules**.

The 2nd respondent who lodged the Notice of Appeal did not file a replying affidavit and we were satisfied, at the hearing of the Motion with no appearance of parties, that the 2nd respondent had been served with the Motion.

It is required by **rule 82** of the **rules of this Court** that an appeal be instituted within 60 days of the date when Notice of Appeal was lodged. The proviso to the said rule gives a window to an appellant who has, within 30 days of the Judgment being appealed, applied for copies of proceedings of that court but by sub-rule (2) of the said rule, that letter must be copied to the other side otherwise computation of time would not have stopped.

By **rule 83** of the said **rules** a party affected by an appeal may at any time either before or after the institution of an appeal apply that the appeal be struck out on the ground that no appeal lies or that an essential step in the proceedings has not been taken or has not been taken within the prescribed time.

The applicant here says that after Judgment was delivered by the trial court a Notice of Appeal was lodged but that no other step was taken by the 2nd respondent. There was no letter requesting proceedings of the trial court and no record of appeal was filed within 60 days of the date of lodging Notice of Appeal or at all.

In the circumstances the application has merit and we allow it. The Notice of Appeal lodged by the 2nd respondent at the Environment and Land Court, Kitale, be and is hereby struck out. The applicant will have costs of the Motion.

**Dated and delivered at Nairobi this 9th day of October, 2020.**

**HANNAH OKWENGU**

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**JUDGE OF APPEAL**

**J. MOHAMMED**

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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**