



**IN THE COURT OF APPEAL**

**AT ELDORET**

**(CORAM: A. MAKHANDIA, P. KIGE, & OTIENO ODEK, JJA)**

**CIVIL APPEAL NO. 118 OF 2018**

**BETWEEN**

**JOSHUA KIPKORIR Suing on**

**behalf of the Estate of KIPSAINA**

**ARAP MURSOI (DECEASED).....APPELLANT**

**AND**

**EZEKIEL KIPELEL & 7 OTHERS.....RESPONDENTS**

**(An Appeal from the Judgment of the High Court of Kenya at Eldoret,**

**(G. K. Kimondo, J) dated 27<sup>th</sup> April, 2017**

**in**

**ELDORET HCC NO. 201 OF 1997)**

**\*\*\*\*\***

**RULING**

Before us is a Notice of Motion dated 25<sup>th</sup> January, 2019 seeking to strike out the Record of appeal in Civil Appeal No. 11 of 2018.

The application is supported by the affidavit of Isaac Julius Sang the 4<sup>th</sup> respondent herein.

The ground in support is that the appeal was filed on 12<sup>th</sup> September, 2018 out of time. The impugned Judgment was delivered on 27<sup>th</sup> April, 2017 and the appeal ought to have been filed on a 9<sup>th</sup> July, 2017. It was submitted the appeal was filed one year and two months out of time.

We have considered the grounds in support of the application to strike out the Record of Appeal. The 1<sup>st</sup> respondent supports the application to strike out.

The respondent to the application opposes the application to strike out on points of law. No replying affidavit has been filed in opposition to the application.

We are satisfied the Record of Appeal was filed 14 months late without leave of this Court. We are further satisfied the Applicant complied with Rule 84 of the Rules of this Court.

Accordingly, we hereby order Civil Appeal No. 118 of 2018 be and is hereby struck off the Record. The Notice of Motion dated 25<sup>th</sup> January, 2019 be and is hereby allowed with costs to the 4<sup>th</sup> respondent and the 1<sup>st</sup> respondent. It is so ordered.

**Dated at Eldoret this 9<sup>th</sup> day of May, 2019.**

**A. MAKHIANDIA**

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**JUDGE OF APPEAL**

**P. KIAGE**

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**JUDGE OF APPEAL**

**OTIENO ODEK**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**