



IN THE COURT OF APPEAL

AT ELDORET

(CORAM: E. M. GITHINJI, HANNAH OKWENGU & J. MOHAMMED, J.J.A)

ELECTION PETITION CIVIL APPEAL NO. 9 OF 2018

BETWEEN

SULEIMAN KASUTI MURUNGA APPELLANT

VERSUS

THE INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION 1ST APPLICANT

MOSES MUNYESI – RETURNING OFFICER,

KIMILILI CONSTITUENCY 2ND RESPONDENT

DIDMAS WEKESA BARASA ALIAS

DIDMAS MUTUA 3RD RESPONDENT

(An application by the 1st and 2nd Applicants seeking to strike out the Notice of appeal dated 27th February, 2018 filed against the judgment of Honourable Justice Anthony Murima delivered on 20th February, 2018 in

Bungoma Election Petition No. 2 of 2017)

R U L I N G O F T H E C O U R T

By a Notice of Motion dated 4th June, 2018 filed as Civil Application No. 32 of 2018 in Election Petition Appeal No. 9 of 2018, the applicants seek to have the notice of appeal filed by the 1st respondent and registered as Election Petition Appeal No. 9 of 2018 struck out with costs.

Although duly served with the motion and a hearing notice, the 1st respondent has not filed any response to the motion nor attended court for the hearing of the motion.

As it is evident from the court file that since the filing of the notice of appeal on 27th February, 2018 to date, the 1st respondent has not filed a record of appeal, the 1st respondent has failed to comply with section 85 A of the Election Act and Rule 8(5) of the Court of Appeal (EP) Rules that required the appeal to be filed within 30 days. The 1st respondent has also failed to provide any security as required under Rule 27 of the Court of Appeal (EP) Rule, 2017.

In light of these infractions, we allow the applicants' motion and strike out the notice of appeal filed on 27th February, 2018 under Rule 84 of the Court of Appeal Rules 2010 as read with Rule 4(2) of the Court of Appeal (EP) Rules, 2017. We award costs to the applicants and the 2nd respondent.

Dated at Eldoret this 14th June, 2018.

E.M. GITHINJI

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JUDGE OF APPEAL

HANNAH OKWENGU

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JUDGE OF APPEAL

J. MOHAMMED

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JUDGE OF APPEAL

I certify that this is a true

copy of the original.

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DEPUTY REGISTRAR