



REPUBLIC OF KENYA



**Dina Management Limited v County Government of Mombasa & 5 others
(Petition 8 (E010) of 2021) [2022] KESC 24 (KLR) (Civ) (19 May 2022) (Ruling)**

Neutral citation: [2022] KESC 24 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA**

CIVIL

PETITION 8 (E010) OF 2021

PM MWILU, DCJ & VP, SC WANJALA, N NDUNGU, I LENAOLA & W OUKO, SCJJ

MAY 19, 2022

BETWEEN

DINA MANAGEMENT LIMITED PETITIONER

AND

COUNTY GOVERNMENT OF MOMBASA 1ST RESPONDENT

CHIEF LAND REGISTRAR 2ND RESPONDENT

DIRECTOR OF SURVEYS 3RD RESPONDENT

LAND REGISTRAR, MOMBASA 4TH RESPONDENT

DIRECTOR, PHYSICAL PLANNING 5TH RESPONDENT

ATTORNEY GENERAL 6TH RESPONDENT

*(Being an Application for Leave to File a Supplementary
Record of Appeal in Petition E010 of 2021)*

RULING

1. Upon perusing the Notice of Motion taken out by the Petitioner/Applicant on 21st October, 2021 and filed on 3rd November, 2021, pursuant to Section 3 of the [Supreme Court Act](#), Rule 17(1), (2) & (3) as well as Rule 36 of the [Supreme Court Rules](#) to be granted leave to file a supplementary record, namely, the stamped and signed Notice of Appeal; and



2. Upon perusing the affidavit sworn by Dennis Nkarichia, an advocate in the law firm of Mohammed Muigai LLP, on 21st October, 2021 in support of the Motion; and
3. Upon considering the written submissions by the Petitioner/Applicant dated 27th October, 2021 filed on 3rd November, 2021, wherein the Petitioner/Applicant explains that the Record of Appeal was filed without a signed and stamped copy of the Notice of Appeal; that the delay in filing the Notice of Appeal was occasioned by the delay of the Court of Appeal registry in supplying a signed and stamped copy of the said Notice of Appeal, although they had timeously electronically filed it on 17th June, 2021 in accordance with the Covid-19 Practice Directions on Electronic Case Management; and that the Petitioner/Applicant had made follow up with Court Registry without luck; and
4. Noting that the 1st Respondent in its relying affidavit and written submissions of 2nd November, 2022, is opposed to the application urging that the Petitioner/Applicant has not invoked Rule 15(2) to seek extension of time to file a Notice of Appeal as they ought to have; that it was the duty of the Petitioner/Applicant to scan and forward duly stamped and signed copies of the Notice of Appeal but failed to do so; that the Petitioner/Applicant has not provided evidence to show that the unsigned Notice of Appeal was lodged at the Court of Appeal registry; further that the Notice of Appeal on record was served outside the seven days of lodgement contrary to Rule 37, which issue has been raised by the 1st Respondent as a ground of objection to the appeal; and that, as a result, there is no valid Notice of Appeal; and
5. Further noting that the 2nd to 6th Respondents in their written submissions dated 9th December, 2021 filed on 10th of December, 2021, are not opposed to this application urging that the Notice of Appeal is an integral document of the Record of Appeal, that it is mandatory for a party intending to file an appeal to file one within 14 days of the date of the judgment appealed against; that the Petitioner/Applicant, having complied by electronically filing the notice within time, the delay in filing a stamped Notice of Appeal was not fatal; and that, in any case, the delay was occasioned by the Court of Appeal registry and not the Petitioner/Applicant;

We now therefore opine as follows:

6. Having noted that the impugned Judgment was rendered on 4th June, 2021, the applicant proceeded to electronically file its Notice of Appeal on 17th June, 2021, within the time limited by Rule 36(1) of the Supreme Court Rules; and that subsequent to this, the Record of Appeal was duly instituted on 19th July, 2021, again within 30 days of filing the Notice of Appeal as prescribed in Rule 38; and
7. Acknowledging that by the provisions of Rule 12(1) of the Supreme Court Rules, pleadings and any other document filed in the Court must be in both printed and electronic form, as explained in the case of *Kenya Hotel Properties Limited v. Attorney General & 5 others*; Application No. 2 of 2021 (E004 of 2021); [2021] eKLR; and
8. Satisfied therefore that the electronic Notice of Appeal was timeously lodged in the Court of Appeal strictly in accordance with Direction 8(3) aforesaid and subsequently filed in this Court within the time set, we find that it is properly on record and reject the objection by the 1st respondent, being satisfied that it was electronically served on 17th June, 2021 which was the same day that the Notice of Appeal was filed.
9. Because the award of costs is discretionary as the Court explained in *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others*, SC Petition No. 4 of 2012; [2014] eKLR, no party, in the instant case, is at fault hence we make no orders as to costs.
10. In the circumstances, we allow this application and make the following orders;



- a. The Application dated 21st October, 2021, and filed on the 3rd November, 2021 is hereby allowed.
- b. There shall be no orders as to costs.

DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF MAY, 2022.

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P.M. MWILU

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**DEPUTY CHIEF JUSTICE & VICE PRESIDENT
OF THE SUPREME COURT**

.....

S.C. WANJALA

JUSTICE OF THE SUPREME COURT

.....

NJOKI NDUNGU

JUSTICE OF THE SUPREME COURT

.....

I. LENAOLA

JUSTICE OF THE SUPREME COURT

.....

W. OUKO

JUSTICE OF THE SUPREME COURT

I certify that this is a true copy

of the original

REGISTRAR

SUPREME COURT OF KENYA

