



**Sonko v Clerk, County Assembly of Nairobi City & 11 others (Petition
(Application) 11 (E008) of 2022) [2022] KESC 28 (KLR) (11 July 2022) (Ruling)**

Neutral citation: [2022] KESC 28 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
PETITION (APPLICATION) 11 (E008) OF 2022
PM MWILU, SC WANJALA, N NDUNGU, I LENAOLA & W OUKO, SCJJ
JULY 11, 2022**

BETWEEN

MIKE MBUVI SONKO APPELLANT

AND

CLERK, COUNTY ASSEMBLY OF NAIROBI CITY 1ST RESPONDENT

SPEAKER NAIROBI CITY COUNTY ASSEMBLY 2ND RESPONDENT

NAIROBI CITY COUNTY ASSEMBLY 3RD RESPONDENT

CLERK OF THE SENATE OF KENYA 4TH RESPONDENT

SPEAKER OF THE SENATE OF KENYA 5TH RESPONDENT

SENATE OF KENYA 6TH RESPONDENT

ATTORNEY GENERAL 7TH RESPONDENT

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION 8TH
RESPONDENT**

**ASSUMPTION OF THE OFFICE OF THE COUNTY GOVERNOR COMMITTEE
NAIROBI CITY COUNTY 9TH RESPONDENT**

**BENSON MUTURA THE ACTING GOVERNOR NAIROBI CITY
COUNTY 10TH RESPONDENT**

**ANN KANANU MWENDA, THE DEPUTY GOVERNOR NAIROBI CITY
COUNTY 11TH RESPONDENT**

OKIYA OKOITI OMTATAH 12TH RESPONDENT

*(Being an Appeal from the Judgment of the Court of Appeal in Civil Appeal E425
of 2021 at Nairobi delivered on 4th March, 2022 by Honourable Lady Justice
R. N. Nambuye, Hannah M. Okwengu and Honourable Mr. Justice Laibuta)*



Pleadings filed electronically (soft copies) must also be filed physically through hard copies.

The Supreme Court declined to strike out an appeal on grounds that the appellant had only filed the soft copy of the appeal on the online registry but had not filed the same in the physical registry. Whereas the court decided to hear and determine the substantive appeal, it frowned upon the conduct of only filing an appeal on the online portal and not serving the respondents.

Reported by John Ribia

Civil Practice and Procedure – appeals – appeals at the Supreme Court – where an appeal was filed on the online registry but not filed on the physical registry – where the said appeal was not served to the respondents in time - whether filing of a soft copy of an appeal on the court’s online registry and not filing the hard copies (physical copies) was grounds to strike out the appeal - .

Brief facts

The 1st respondent filed the instant application in which it sought for the notice of appeal to be struck out for failure to file an appeal within 30 days of the delivery of the Judgment.

The application was on the grounds that the appellant lodged a soft copy notice of appeal in the Judiciary’s online portal in time but did not file or serve the hard copies in time. Subsequently the 1st respondent sought for the notice of appeal and petition of appeal filed by the appellant to be struck out.

Issues

Whether filing of a soft copy of an appeal on the court’s online registry and not filing the hard copies (physical copies) was enough grounds to have such an appeal struck out.

Relevant provisions of the Law

12. Filing of documents

- (1) *Pleadings and any other document filed in the Court shall be in both printed and electronic form.*
- (2) *A party filing any document shall ensure consistency in the printed and the electronic formats.*
- (3) *In case of any inconsistency between the hard copy and soft copy, the hard copy shall prevail.*
- (4) *Where a document is lodged in a sub-registry, the deputy registrar receiving the same shall transmit it to the Registry.*

Held

- 1. The appellant filed a notice of appeal at the Court of Appeal 4 days after the Court of Appeal Judgment. The appellant filed his petition of appeal on the Supreme Court’s online platform on the last day for doing so. Rule 12 of the Supreme Court Rules provided that the printed copy of any pleading, while matching the electronic copy, was to be filed simultaneously with the latter. The rule remained the operative rule in the Supreme Court.
- 2. Though the appellant sat on the printed copy for more than one month, once the appellant was directed to file the same, he did so within 2 days and thereafter served the respondents. While the conduct of the appellant in not filing the printed copy timeously had not been explained, the circumstances as outlined above would not lead to any adverse orders against him and although his conduct was nonetheless to be deprecated, the court would focus on the substantive appeal.

Motion dismissed and preliminary objection overruled.

Orders

No orders as to costs.

Citations

Cases



1. Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 others (Civil Application 36 of 2014; [2015] KESC 2 (KLR)) — Mentioned
2. Salat, Nicholas Kiptoo Arap Korir v Independent Electoral and Boundaries Commission & 7 others (Application 16 of 2014; [2014] KESC 12 (KLR)) — Mentioned

Statutes

None referred to

Advocates

None mentioned

RULING

1. Upon perusing the notice of motion dated June 16, 2022 by the 1st respondent seeking orders that the notice of appeal dated March 4, 2022 be struck out for failure to file an appeal within 30 days of the delivery of the Judgment appealed from and;
2. Noting that the motion is premised on rules 33 and 37 of this *Court's Rules* and having perused the supporting affidavit of Edward Ombwori Gichana, Clerk of the 1st respondent;
3. Further noting the 1st respondent's submissions to the effect that following this court's decision in *Nicholas Kiptoo Arap Korir Salat v. IEBC & 7 others* [2014] eKLR as well as *IEBC v. Jane Cheperenger & 2 Others* [2015] eKLR, and since the appellant, Mike Mbuvi Sonko were lodged the notice of appeal dated March 4, 2022 as Court of Appeal registry neither did he serve it on the 1st respondent or any other respondent for that matter and;
4. Therefore the filing of the petition and record of appeal predicated on the impugned notice of appeal and the service of the said pleadings on June 2, 2022 were all done in violation of rules 31, 32, 33, 34, 37 and 53 of our *Rules*. Consequently, they should all be struck out and;
5. Further Noting the 2nd and 10th respondents' Notice of preliminary objection dated June 15, 2022 and filed on June 17, 2022 wherein the said respondents seek orders that the Petition of Appeal dated April 1, 2022 and filed on May 20, 2022 be struck out with costs for having been filed out of time and is therefore incompetent, null, void and of no legal consequence and;
6. Noting the contents of the petitioner/respondent's replying affidavit sworn on June 20, 2022 and Wilfred Nyamu's replying affidavit sworn on June 29, 2022 wherein they both contend that his petition of appeal was filed on April 4, 2022 and within the 30 days of the Court of Appeal Judgment delivered on March 4, 2022 and further, that the notice of appeal was properly filed at the Court of Appeal on March 8, 2022 and;
7. Having also considered both the petitioner's submissions dated June 20, 2022 and those by the respondents and;
8. Aware that, on June 21, 2022, the Registrar of this court wrote to the Advocate for the 2nd and 10th respondents confirming that the appeal in contention was filed on this court's online platform on April 4, 2022 while the printed copy was presented to the Registry only on May 20, 2022;
9. We now determine as follows:
 - i. There is no doubt that the appellant filed a notice of appeal at the Court of Appeal on March 8, 2022, 4 days after the Court of Appeal Judgment. The record of appeal at page 004509 and the fees receipt marked as annexure "MMS1" are clear evidence of that fact.



- ii. There is also no doubt that the appellant filed his petition of appeal on this court's online platform on April 4, 2022- the last day for doing so under rule 38 (1) (a) as per the court's rules.
 - iii. The Registrar of this court wrote to the appellant on May 18, 2022 directing him to file the printed copy of the Petition of Appeal within 7 days which was done on May 20, 2022.
 - iv. The only question therefore left to address is the import of rule 12 of the Rules which provides as follows; -
 - “(1) Pleadings and any other document filed in the court shall be in both printed and electronic form.
 - (2) A party filing any document shall ensure consistency in the printed and the electronic formats.
 - (3) In case of any inconsistency between the hard copy and soft copy, the hard copy shall prevail.
 - (4) Where a document is lodged in a sub-registry, the deputy registrar receiving the same shall transmit it to the Registry.”
10. A plain reading of the rule would lead to the simple conclusion, as properly expressed by the Registrar in her letter of May 18, 2022 that the printed copy of any pleading, while matching the electronic copy, shall be filed simultaneously with the latter. This must remain the operative rule in this court.
 11. In the present case, while the appellant sat on the printed copy for more than one month, once directed to file the same, he did so within 2 days and thereafter served the respondents. While the conduct of the appellant in not filing the printed copy timeously has not been explained, the circumstances as outlined above would not lead to any adverse orders against him and although his conduct is nonetheless to be deprecated, it is the aim of this court to focus on the substantive appeal.
 12. Having therefore considered the motion, preliminary objection plus responses thereto, we must dismiss the motion and overrule the preliminary objection.
 13. We shall make no orders as to costs.
 14. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 11TH DAY OF JULY 2022.

P.M MWILU

.....

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

