

**REPUBLIC OF KENYA**

**IN THE SUPREME COURT OF KENYA**

*(Coram: Mwilu DCJ & VP, Wanjala, Njoki, Lenaola & Ouko SCJJ)*

**PETITION NO. 8 (E010) OF 2021**

**BETWEEN**

**DINA MANAGEMENT LIMITED..... APPLICANT/PETITIONER**

**AND**

**COUNTY GOVERNMENT OF MOMBASA ..... 1<sup>ST</sup> RESPONDENT**

**THE CHIEF LAND REGISTRAR .....2<sup>ND</sup> RESPONDENT**

**THE LAND REGISTRAR, MOMBASA .....3<sup>RD</sup> RESPONDENT**

**THE DIRECTOR OF SURVEYS.....4<sup>TH</sup> RESPONDENT**

**THE DIRECTOR, PHYSICAL PLANNING .....5<sup>TH</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL .....6<sup>TH</sup> RESPONENT**

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

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**RULING OF THE COURT**

**[1] UPON** perusing the Notice of Motion taken out by the Petitioner/Applicant on 21<sup>st</sup> October, 2021 and filed on 3<sup>rd</sup> 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 21<sup>st</sup> October, 2021 in support of the Motion; and

**[3] UPON** considering the written submissions by the Petitioner/Applicant dated 27<sup>th</sup> October, 2021 filed on 3<sup>rd</sup> 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 17<sup>th</sup> 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 1<sup>st</sup> Respondent in its relying affidavit and written submissions of 2<sup>nd</sup> 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 1<sup>st</sup> 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 2<sup>nd</sup> to 6<sup>th</sup> Respondents in their written submissions dated 9<sup>th</sup> December, 2021 filed on 10<sup>th</sup> 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 4<sup>th</sup> June, 2021, the applicant proceeded to electronically file its Notice of Appeal on 17<sup>th</sup> 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 19<sup>th</sup> 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 1<sup>st</sup> respondent, being satisfied that it was electronically served on 17<sup>th</sup> 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 21<sup>st</sup> October, 2021, and filed on the 3<sup>rd</sup> November, 2021 is hereby allowed.***
- b. There shall be no orders as to costs.***

**DATED and DELIVERED at NAIROBI this 19<sup>th</sup> Day of May, 2022.**

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**P.M. MWILU**  
**DEPUTY CHIEF JUSTICE & VICE PRESIDENT**  
**OF THE SUPREME COURT**

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**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**

