

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA AT NAIROBI

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

PETITION (APPLICATION) NO.11 (E008) OF 2022

-BETWEEN-

HON. MIKE MBUVI SONKO..... APPELLANT

-AND-

THE CLERK,

COUNTY ASSEMBLY OF NAIROBI CITY1ST RESPONDENT

THE SPEAKER,

NAIROBI CITY COUNTY ASSEMBLY 2ND RESPONDENT

THE NAIROBI CITY COUNTY ASSEMBLY.....3RD RESPONDENT

THE CLERK OF THE SENATE OF KENYA.....4TH RESPONDENT

THE SPEAKER OF THE SENATE OF KENYA.....5TH RESPONDENT

THE SENATE OF KENYA.....6TH RESPONDENT

THE HON. ATTORNEY GENERAL.....7TH RESPONDENT

THE INDEPENDENT ELECTORAL

AND BOUNDARIES COMMISSION.....8TH RESPONDENT

THE ASSUMPTION OF THE OFFICE OF THE COUNTY

GOVERNOR COMMITTEE NAIROBI

CITY COUNTY.....9TH RESPONDENT

HON. 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)*

RULING OF THE COURT

[1] Upon perusing the Notice of Motion dated 16th June, 2022 by the 1st respondent seeking orders that the Notice of Appeal dated 4th March 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 Chepenger & 2 Others** [2015] eKLR, and since the appellant, Mike Mbuvi Sonko were lodged the Notice of Appeal dated 4th March 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 2nd June 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 15th June 2022 and filed on 17th June 2022 wherein the said respondents seek orders that the Petition of Appeal dated 1st April 2022 and filed on 20th May 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 20th June 2022 and Wilfred Nyamu's replying affidavit sworn on 29th June 2022 wherein they both contend that his Petition of Appeal was filed on 4th April 2022 and within the 30 days of the Court of Appeal Judgment delivered on 4th March 2022 and further, that the Notice of Appeal was properly filed at the Court of Appeal on 8th March 2022 and;

[7] HAVING also considered both the petitioner's submissions dated 20th June 2022 and those by the respondents and;

[8] AWARE that, on 21st June 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 4th April 2022 while the printed copy was presented to the Registry only on 20th May 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 8th March 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 4th April 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 18th May 2022 directing him to file the printed copy of the Petition of Appeal within 7 days which was done on 20th May 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 filling 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 18th May 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.

