



Case Number:	Civil Appeal (Application) 79 of 2010
Date Delivered:	12 Nov 2010
Case Class:	Civil
Court:	Court of Appeal at Eldoret
Case Action:	Ruling
Judge:	Riaga Samuel Cornelius Omolo, Samuel Elikana Ondari Bosire, Alnashir Ramazanali Magan Visram
Citation:	Trans-Nzoia Investment Company Limited v Joseph Wanambis & 4 others [2010] eKLR
Advocates:	-
Case Summary:	Civil practice and procedure-striking out-application striking out the notice of appeal and the record of appeal-ground that the respondents should have filed two different notices of appeal against the two orders of the superior court-whether striking out the notice and record of appeal would be in line with the overriding objective in civil litigation-validity of application-Appellate Jurisdiction Act (cap 9) sections 3A, 3B
Court Division:	Civil
History Magistrates:	-
County:	Uasin Gishu
Docket Number:	-
History Docket Number:	59 of 2005
Case Outcome:	Application Dismissed.
History County:	Trans Nzoia
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-

Sum Awarded:

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IN THE COURT OF APPEAL OF KENYA

AT ELDORET

CIVIL APPEAL (APPLICATION) 79 OF 2010

BETWEEN

TRANS-NZOIA INVESTMENT

COMPANY LIMITED APPLICANT/RESPONDENT

AND

JOSEPH WANAMBISI 1ST RESPONDENT

ALFRED WANAMBISI 2ND RESPONDENT

WEKESA WAMINILA 3RD RESPONDENT

SAMMY WANJALA 4TH RESPONDENT

IBRAHIM ONGARO 5TH RESPONDENT

(Being an application to strike out record of appeal from the ruling and order of the High Court of Kenya at Kitale (Ombija, J) dated 11th November, 2009 and 16th December, 2009

In

H.C. C. Suit No. 59 of 2005)

RULING OF THE COURT

We think there is no merit in the motion before us filed by **Trans-Nzoia Investment Company**, the applicant hereinafter, asking us to strike out the notice of appeal and the record of appeal filed by Joseph Wanambisi and four other named persons, hereinafter the respondents. On 11th November, 2009, Ombija, J found the five respondents guilty of contempt of court and convicted them. On 16th December, 2009, the learned Judge ordered that each respondent was to pay a fine of Kshs.5000/- or in default be imprisoned for a term of six months. The respondents filed a notice of appeal against both orders on 17th December 2009, one day after the last order made on 16th December, 2009. Mr. Kiarie, learned counsel for the applicant, told us that two notices of appeal ought to have been filed, one against the order of 11th November, 2009 which should have been filed by 25th November, 2009 and a second notice against the order of 16th December, 2009.

The order of 11th November, 2009 was not complete; it was in fact perfected and completed on 16th December, 2009 when the learned Judge imposed sentences upon the respondents. It would be wholly artificial to separate the two orders in the manner Mr. Kiarie asked us to do and then strike out the record of appeal on that basis. Even if there was any irregularity in filing a single notice of appeal such an irregularity is now curable under and in accordance with the provisions of *sections 3A and 3B* of the Appellant Jurisdiction Act which have introduced the concept of over-riding objective of litigation in our courts and it would clearly be contrary to the letter and spirit of the two sections to strike out the record of appeal so that the respondents to the motion can start all-over again. That would only increase the time taken by the litigation and costs thereof. We reject the applicant's motion dated and lodged in the Court on 11th May, 2010 and order that it be and is hereby dismissed. The costs of the dismissed motion shall be to the respondents in any event. Those are the orders of the Court.

Dated and delivered at Eldoret this 12th day of November, 2010.

R.S.C. OMOLO

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JUDGE OF APPEAL

S.E.O. BOSIRE

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JUDGE OF APPEAL

ALNASHIR VISRAM

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR.



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