



REPUBLIC OF KENYA



**Baobab Beach Resort Mombasa Ltd t/a Baobab Beach Resort v Waihenya (Civil Application 37 of 2020) [2021] KECA 277 (KLR) (3 December 2021) (Ruling)**

Neutral citation: [2021] KECA 277 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT MALINDI  
CIVIL APPLICATION 37 OF 2020**

**JW LESSIT, JA**

**DECEMBER 3, 2021**

**BETWEEN**

**BAOBAB BEACH RESORT MOMBASA LTD T/A BAOBAB BEACH  
RESORT ..... APPLICANT**

**AND**

**MICHAEL WAIHENYA ..... RESPONDENT**

*(An application for extension of time to file and serve the Notice of Appeal, out of time in an intended Appeal from the judgement of the High Court of Kenya at Mombasa (P.J Otieno) delivered on the 8th day of May 2020 in HCC Case No. 267 of 2005)*

**RULING**

1. The application before me for hearing is dated 29<sup>th</sup> May, 2020. It is brought under Articles 48 & 159 (2) (d) of the *Constitution*, Section 3A & 3B of the *Appellate Jurisdiction Act*, Cap 9 & Rules 1 (2), 4, 41 and 42 (1) of the *Court of Appeal Rules, 2010*. It seeks the following 3 orders:
  1. That this Honourable Court be pleased to grant an extension of time for the lodging and service of a Notice of appeal against the judgement and Decree of the Honourable Justice P.J Otieno delivered on the 8<sup>th</sup> day of May 2020 in Mombasa High Court Civil Suit No. 267 of 2005 between Michael Waihenya v Baobab Beach Resort Mombasa Limited t/a Baobab Beach Resort.
  2. That the Applicant's Notice of Appeal lodged on 26<sup>th</sup> May 2020 and served on intended Respondents be deemed to have been filed within time and to be properly on record.
  3. That the costs of this Application do abide the outcome of the intended appeal.



2. When the application came up for hearing through filed submissions, a Notice of Withdrawal was served upon the court. It is dated 14<sup>th</sup> October, 2021. It gives notice that the Applicant in this case has withdrawn its Notice of Motion dated 29<sup>th</sup> May 2020 with no order as to costs. I noted that the case number in the notice is Civil Application No. E037 of 2021, while the instant case is Civil Application No. 37 of 2020. The parties and their advocates as per the Notice and the case file are the same, and so is the date and nature of the application being withdrawn. I will take it that the error on the year the case was filed as per the Notice is a typographical error.
3. Accordingly, I mark the Notice of Motion application dated 28<sup>th</sup> May 2020 withdrawn under Rule 96 of the Court of Appeal Rules with no orders as to costs.

**DATED AND DELIVERED AT MOMBASA THIS 3<sup>RD</sup> DAY OF DECEMBER, 2021.**

**J. LESIIT**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

