



**Auto Industries Limited v Mulatya & 2 others (Civil Appeal
E058 of 2021) [2023] KEHC 4118 (KLR) (24 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 4118 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
CIVIL APPEAL E058 OF 2021**

G MUTAI, J

APRIL 24, 2023

BETWEEN

AUTO INDUSTRIES LIMITED APPELLANT

AND

CHARITY KAMENE MULATYA 1ST RESPONDENT

LANDMARK HOLDINGS LTD 2ND RESPONDENT

VARNI AUTO AND HARDWARE 3RD RESPONDENT

JUDGMENT

1. This appeal arises out of a ruling of the hon Edwin Mulochi, RM which he delivered on September 22, 2021 in Kajiado CMCC 345 of 2018. The said ruling aggrieved the Appellant who was a Third Party therein. It thus filed what I think is an overly argumentative 13 paragraph memorandum of appeal against a judgment delivered on April 26, 2021 and a ruling made on September 22, 2021. The memorandum of appeal was filed on April 4, 2022.
2. Before I deal with the merit of the appeal I must first determine if I have jurisdiction to deal with it. In the celebrated case of the *The Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR Nyarangi, JA said as follows: -

“With that I return to the issue of jurisdiction and to the words of Section 20 (2) (m) of the 1981 Act. I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. Before I part with this aspect of the appeal, I refer to the following passage



which will show that what I have already said is consistent with authority: “By jurisdiction is meant the authority which a court as to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognisance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts ...”

3. In *Samuel Kamau Macharia & Another versus Kenya Commercial Bank & 2 Others* [2012]eKLR, the Supreme Court, the Court was particular that there must be jurisdiction and the same cannot be conferred by consent by connivance or by craft. The court was precise and held as follows: -

“As held in the matter of advisory opinion of the court under article 163 of the Constitutional Petition No 2 of 2011 at para 30, the court stated, “A court may not arrogate itself jurisdiction through craft of interpretation or by way of endeavours to discern of interpret the intentions of Parliament where legislation is clear and there is no ambiguity.”

4. I do not understand the basis of the notice of appeal filed herein Under section 79(G) of the *Civil Procedure Act* a party is required file an appeal within 30 days of the decision appealed from. This is to say that in respect of a decision made on September 21, 2021 an appeal should have been lodged by October 21, 2021. That in respect of a decision made on April 26, 2021 should, in like manner have been filed before May 26, 2021. This appeal, which appears to be a “consolidated” appeal is from these two decisions.
5. My opinion is that each decision ought to be appealed separately within 30 days. The appeal before me is therefore a composite appeal, unknown to the law as I understand, filed out of time.
6. I note that the appellant filed a notice of appeal dated January 28, 2021 in two unrelated decisions several months out of time. I have perused the file and cannot find an order granting the appellant leave to appeal from any of the decisions appealed from.
7. Without a properly filed appeal, this court has no jurisdiction to question the decisions of the lower court. The Court of Appeal in addressing the issue of filing appeals to that court, aptly stated as follows in the case of *Esther Anyango Ochieng versus Tramara Sugar Company Ltd*(2020) eKLR : -

“we have said on numerous occasions that rules of the court exist for the Purpose of orderly administration of justice before this court. The timelines for doing certain things and taking certain steps are indispensable to the proper adjudication of appeals before us. The rules are expressed in clear and unambiguous terms and they command obedience.

8. I have no jurisdiction to hear and determine an appeal field out of time. Consequently, I put my pen down and order as follows: -
- a. The Appeal herein be and is hereby struck out;
 - b. I award Costs to the 1st Respondent;
 - c. Other parties to bear their own costs; and



d. This file is closed

DELIVERED, DATED and SIGNED in **MOMBASA** on this 24th day of **April, 2023**. Judgment delivered through Microsoft Teams Online Platform.

GREGORY MUTAI

JUDGE

In the presence of:

No Appearance for the Appellant

No Appearance for the Respondent.

Winnie Migot – Court Assistant

