



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CIVIL APPEAL NO. 144 “B” OF 1993

SAMUEL NDURA KANYARA.....APPLICANT

VERSUS

MARY NJAMBI KARIUKI.....RESPONDENT

RULING

1. The applicant prays for *enlargement of time* to lodge an appeal. He has presented a notice of motion dated 22nd June 2016. The main grounds of the application, as I can discern them, are as follows: that on 30th November 1993, the lower court delivered judgment. The applicant was aggrieved. He filed Civil Appeal 144 of 1993 at the High Court on 20th December 1993. A receipt number 400506 for court filing fees is annexed.

2. That appeal was admitted by *Aganyanya J* (as he then was) on 3rd February 1994. Directions for hearing of the appeal would seem to have been given by *Gacheche J* on 28th October 2009. However, the appellant did not proceed with the appeal due to a “*mix up*” with two other files at the High Court: *Civil Appeal 152 of 1994*; and, *Civil Appeal 144 “B” of 1993*.

3. The applicant has filed lengthy but incoherent submissions on 13th December 2016. He submits that the latter two appeals-

“Have not reached to justice (judge) for direction and no proceeding of the two appeals [sic] and if it has reached to justice give out those two memorandum [sic] of appeal on the hearing date.”

4. When he appeared before me the applicant tried to argue the merits of the appeal. He submitted that the memoranda of appeals in *Civil Appeal 144 “B” of 1993* and *Civil Appeal 152 of 1994* have never been filed; and, that the matters went directly to taxation. He said he only paid for the appeal in Civil Appeal 144 of 1993. He does not then understand why he should be burdened with costs in the other two appeals.

5. The respondent has raised a *preliminary objection*. There is also a replying affidavit sworn by the respondent on 7th December 2016. The pith of the objection is that this court has no *jurisdiction* to entertain the matter. Learned counsel for the respondent submitted that the application can only be founded upon Rule 4 of the *Court of Appeal Rules*. Reference was also made to a ruling of the Court of Appeal in *Civil Appeal 54 of 2015*. Musinga JA ruled that the present applicant was *undeserving* of leave to appeal against the ruling of the High Court of 7th October 2014. I was implored to find that the matter is *res judicata*.

6. Jurisdiction is everything. Without it, the court must lay down its tools. Owners of the Motor Vessel "Lilian S" v Caltex Oil (Kenya) Limited [1989] KLR 1. I find that I am *not* seized of jurisdiction to consider the application. On 7th October 2014, I heard a similar motion by the applicant for leave in HCCC 144 of 1993 and 144 "B" of 1993. For reasons on the record, I dismissed the motion.

7. The applicant was aggrieved and filed Civil Appeal 54 of 2015 Samuel Kanyara v Mary Njambi Kariuki. The Court of Appeal (Musinga JA) delivered a ruling on 10th March 2016. The heading of the ruling is clear that it related to both *HCCC 144 of 1993* and *HCCC 144 "B" of 1993*. The application was dismissed, for among other reasons, that there was *unreasonable delay* of 23 years since the impugned judgment; and, for failure to annex a draft *memorandum of appeal*.

8. The applicant now purports to *re-open* the prayer of leave before the High Court. It is highly irregular; and, impermissible. The matter is clearly *res judicata* and lodged in the *wrong forum*. Having so found I need not interrogate the merits of the intended appeal. I lay down my tools. Owners of the Motor Vessel "Lilian S" v Caltex Oil (Kenya) Limited [1989] KLR 1.

9. The upshot is that the applicant's notice of motion dated 22nd June 2016 is *dismissed with costs*.

It is so ordered.

DATED, SIGNED and DELIVERED at **ELDORET** this 30th day of March 2017.

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of:

Applicant (in person).

Mr. Njuguna for the respondent instructed by Njuguna & Company Advocates.

Mr. J. Kemboi, Court Clerk.