



**Kamau v Kenya Power & Lighting Company Limited (Civil Appeal 454 of 2018) [2023] KEHC 3786 (KLR) (Civ) (2 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 3786 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL 454 OF 2018**

**JN MULWA, J**

**MAY 2, 2023**

**BETWEEN**

**JOSEPH KARANJA KAMAU ..... APPELLANT**

**AND**

**KENYA POWER & LIGHTING COMPANY LIMITED ..... RESPONDENT**

**RULING**

1. This Ruling is in respect to the Respondent/Applicant's Notice of Motion application dated 31<sup>st</sup> May 2022. The Application was purportedly filed pursuant to Article 159 (2) (d) of *the Constitution* of Kenya 2010, Sections 79G, 1A, and 3A of the *Civil Procedure Act*, Order 22 Rule 22, Order 42 Rules 4 and 6 as well as Order 51 Rules 1 and 3 of the Civil Procedure Rules 2010. The Respondent seeks the following orders:

1. Spent.
2. That this Honourable Court be pleased to grant leave to the Respondent/Applicant to file a cross appeal out of time against the judgment delivered by Hon. D. A. Ocharo (SRM) on 13<sup>th</sup> September 2018 in Nairobi CMCC No. 8688 of 2016 - Joseph Karanja Kamau v Kenya Power & Lighting Company Limited.
3. That the attached draft Cross Appeal be deemed to be duly filed within time upon payment of the requisite fees.
4. That the costs of this Application be in the cause.



1. The application is premised on the grounds set out on its face and supported by the Supporting and Supplementary Affidavits sworn by the Respondent Advocate Mathew K. Itonga.
2. In response, the Appellant filed a Replying Affidavit sworn on 10<sup>th</sup> June 2022 by his Advocate Nelson Kaburu Felix.
3. The Application was disposed of by way of written submissions. Upon carefully considering the submissions alongside the orders sought and the parties respective affidavits, the court finds that the only issue for determination is whether the application is merited.
4. It is common ground that the Respondent had filed in this court a separate appeal being H.C.C.A. No. 480 of 2018 - Kenya Power & Lighting Company Limited v Joseph Kanja Kamau against the judgment of the Hon. D. Ocharo delivered on 13<sup>th</sup> September 2018 in Nairobi CMCC No. 8688 of 2016 from which the Appellant's appeal arises. The Respondent's aforesaid appeal was filed on 9<sup>th</sup> October 2018, well within the 30 days period prescribed by Section 79G of the Civil Procedure Code. It is also noteworthy that on 6<sup>th</sup> December 2021, the Respondent in fact filed an application in this matter seeking for consolidation of this appeal with its appeal H.C.C.A. No. 480 of 2018. However, the Respondent's appeal was dismissed for want of prosecution on 25<sup>th</sup> March 2022 before the said application was heard.
5. It is absurd that the Respondent has completely abandoned its dismissed appeal and now wants to be allowed to file another cross appeal within the Appellant's appeal herein out of time. The Respondent has proffered several reasons for his purported delay in filing the intended cross appeal including laying blame on the Appellant for failing to notify it on time that it had already filed an appeal. Without even delving into the merits of the application, the court finds that it is frivolous, vexatious and an abuse of court process. The Respondent is represented by Counsel whose professional background demands that he should be well aware of how court processes are conducted and not file applications that are dead on arrival at the expense of the client. Indeed, what the Respondent ought to have done is to seek for reinstatement of its dismissed appeal and if the same is allowed, then he could pursue the application for consolidation of the two appeals.
6. For the foregoing, the court finds that the Respondent's Notice of Motion application dated 31<sup>st</sup> May 2022 lacks merit and is hereby dismissed with costs to the Appellant.

Orders Accordingly.

Delivered, dated and signed at Nairobi this 2<sup>nd</sup> day of May 2023.

**JANET MULWA**

**JUDGE.**

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