



Nyabayo v Shop and Deliver Limited t/a Betika (Civil Application E564 of 2024) [2026] KECA 213 (KLR) (6 February 2026) (Ruling)

Neutral citation: [2026] KECA 213 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E564 OF 2024
W KARANJA, K M'INOTI & LA ACHODE, JJA
FEBRUARY 6, 2026**

BETWEEN

CLAIR NYABAYO APPLICANT

AND

SHOP AND DELIVER LIMITED T/A BETIKA RESPONDENT

(Being a reference under rule 57 of the Court of Appeal Rules, from the Ruling of (M. Ngugi, JA.) dated 7th March 2025 in an application for leave to file an appeal from the Judgment of the High Court at Nairobi (Mabeya, J.) dated 10th September 2024 in Civil Appeal No. E191 of 2023)

RULING

1. This is a reference to the full Court, under Rule 57 of this Court's Rules from the decision of a single Judge of this Court (M. Ngugi, JA.) dated 10th September 2024. The learned Judge considered an application by Clair Nyabuto, the applicant, seeking leave to file an appeal. In the same application, the applicant sought extension of time to file the appeal out of time under rule 4 of the Court of Appeal Rules. The intended appeal arose from a judgment delivered by Mabeya, J. on 10th September 2024 in Nairobi HCCA No. E191 of 2023. The application seeking leave was brought under Rule 44 of the Rules of this Court.
2. In the said application, the applicant contended that she placed bets on Betika's website and rightfully won a net prize of over Kshs 99,976,851.61 and that after withdrawing Kshs 140,000 she was unable to make further withdrawals and her account was frozen as Betika claimed that the large winnings were a result of exploiting an internal system bug or flaw in the game logic.
3. Following Betika's action the applicant lodged a complaint with the Betting Control & Licensing Board (BCLB), which, on July 31, 2023, awarded her Kshs.1,000,000 based on the argument that the game's terms and conditions capped the maximum payout at this amount. The Board concluded any amount above that limit was void.



4. Aggrieved by that decision of the BLCB the applicant appealed to the High Court. She argued that the maximum winnings terms were not in effect when she played the game and were unfairly introduced during the dispute. The High Court dismissed her appeal on 10th September, 2024 agreeing that paying the full amount would be unjust enrichment due to a system error, and noted that the applicant failed to include the disputed terms and conditions in her record of appeal.
5. Aggrieved by the High Court decision, the applicant filed the instant application seeking leave to appeal against the High Court judgment as the *Betting, Lotteries and Gaming Act* at section 62 generally bars an appeal to this Court from a decision of the High Court.
6. The applicant deponed that this statutory limitation violates her right to access justice and that the High Court's decision was manifestly wrong.
7. Opposing the application, Shop and Deliver Limited T/a Betika, the respondent, contended that the intended appeal is null and void abinitio as a right of appeal is a creature of statute and, in this specific type of betting dispute, the relevant legislation section 62 of the Betting, Lotteries & Gaming Act makes the High Court's decision final, thus excluding a further appeal to the Court of Appeal by the applicant.
8. In her ruling dated 7th March 2025, M. Ngugi, JA. held that;

“The issue before me for consideration is whether I can grant leave to the applicant to file a second appeal to this Court from a decision of the Betting Control and Licensing Board. In responding to this question, I do so bearing in mind the jurisdictional opposition to the application raised by the respondent. The *Betting, Lotteries and Gaming Act*, No. 9 of 1996, provides at section 62 as follows:

“62. A person aggrieved by a decision of the Board made under this Act may, within twenty-one days of the decision, appeal to the High Court, and a decision of a judge of the High Court shall not be the subject of appeal.”

The applicant recognizes the limits placed on this Court by the above provision.

Given the express provisions of section 62 of the *Betting, Lotteries and Gaming Act* and the jurisprudence on the question of jurisdiction as enunciated in Attorney General -vs- Bala (supra), with which I agree, I find that I have no jurisdiction to go around the express prohibition of appeals to this Court from decisions of the Board.

Accordingly, the application dated 18th October 2024 is dismissed, but with no order as to costs.”

9. The refusal by the learned Judge to exercise her discretion in favour of the applicant precipitated the filing of this reference.
10. At the hearing of this application, learned counsel, Mr. Meso, held brief for Caroline Oduor for the applicant, while the respondent was represented by Mr. Ogutu, learned counsel, who held brief for Mr. Wairoto. Both counsel opted to rely entirely on the submissions already filed and made no oral highlights.
11. In an application for reference as the one before us, a full bench would only interfere with the exercise of discretion if it is apparent that the single Judge took into account an irrelevant matter, which he or she ought not to have taken into account; or failed to take into account a relevant matter; or that there was misapprehension of the law applicable, and the evidence presented; or that his decision was plainly



wrong. See John Koyi Waluke vs. Moses Masika Wetangula & 2 others, Civil Appeal Application No. 307 of 2009, (unreported).

12. That said, the first issue that has attracted our consideration is the question of jurisdiction. Which court is clothed with jurisdiction to consider applications for leave to appeal. Rule 55 of the Court of Appeal Rules designates the applications that are to be heard by a single Judge and those for hearing before the full Court in the first instance. The Rule provides as follows.

“(1) Each application, other than an application specified in sub-rule (2), shall be heard by a single judge:

Provided that such application may be adjourned by the judge for determination by the Court.

2. This rule shall not apply to—

- a. an application for leave to appeal;
- b. an application for a stay of execution, injunction, or stay of further proceedings;
- c. an application to strike out a notice of appeal or an appeal; or
- d. an application made as ancillary to an application under paragraph (a) or (b) or made informally in the course of a hearing.”

13. The learned single Judge did not, therefore, have jurisdiction to entertain the prayer for leave to appeal and determine the same on merit. Her ultimate decision could have been correct, but without the requisite jurisdiction, the decision arrived at was a nullity and must be set aside *ex debito justitiae*.

14. We note that the applicant had also sought an order for extension of time within which to file the appeal, but the learned Judge did not consider the said prayer and did not make any specific finding in that regard. Having declined to grant leave to appeal, the learned Judge must have concluded that the prayer in question was unsustainable and had been rendered moot. As there was no determination made by the learned Judge on extension of time, then we cannot address it here by way of reference.

15. For the foregoing reasons, we set aside the ruling of M. Ngugi, JA. dated 7th March 2025 with no order as to costs. The applicant is at liberty to file a fresh application segregating the single Judge’s prayer for extension of time and the full court prayers for leave to appeal and have them fixed for hearing before a bench with jurisdiction. Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 6TH DAY OF FEBRUARY 2026.

W. KARANJA

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JUDGE OF APPEAL

K. M’INOTI

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JUDGE OF APPEAL

K. ACHODE



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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

