

**IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPEAL (APPLICATION) NO. E207 OF 2021**

**MATIVO, JA**

**BETWEEN**

**MIWANI SUGAR COMPANY (1989) LIMITED [IN RECEIVERSHIP].....APPLICANT**

**AND**

**CROSSLEY HOLDINGS LIMITED.....1<sup>ST</sup> RESPONDENT**

**THE CABINET SECRETARY, MINISTRY OF**

**AGRICULTURE, LIVESTOCK AND FISHERIES....2<sup>ND</sup> RESPONDENT**

**THE AGRICULTURE & FOOD AUTHORITY.....3<sup>RD</sup> RESPONDENT**

**THE COUNTY GOVERNMENT OF KISUMU.....4<sup>TH</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....5<sup>TH</sup> RESPONDENT**

**RICHARD OCHIENG OGENDO.....6<sup>TH</sup> RESPONDENT**

**JULIUS OKELLO KUNGU.....7<sup>TH</sup> RESPONDENT**

*(Being an application for leave to amend the Notice of Appeal dated 7<sup>th</sup> April 2021 arising from the Judgment and decree of Hon. Mr. Justice A.O. Ombwayo dated & delivered on 30<sup>th</sup> September 2021 in Kisumu ELC Constitutional Petition No.6 of 2020).*

**RULING**

1. The foundational promise of our legal order is that justice must not only be done but must be seen to be done, and crucially, it must be done without undue delay. Expeditious determination of cases is a constitutional dictate courtesy of Article 159 (2) (d) of the Constitution. This constitutional imperative is replicated in Section 3A of the Appellate Jurisdiction Act. This matter comes before me following a protracted and deeply regrettable hiatus spanning from 7<sup>th</sup> December 2021 when the application was filed and 29<sup>th</sup> February 2024, when the application was listed in a supplementary list before me as a single judge, after a delay of three years. As if this delay was not enough, the application (a Court of Appeal Kisumu file) was listed in

a Nairobi

supplementary cause list on 29<sup>th</sup> February 2024. I was sitting in Nairobi Court of Appeal then and to my mind, the application was not brought to my attention. In May 2024, the matter was brought to my attention and my response was that I could not recall handing the file. Convinced that it was a Nairobi file, I thought it was among the many matters that came before me for certification. I wrote an e-mail to that effect. After another lull, on 26<sup>th</sup> March 2026, correspondence from the applicants advocate was forwarded to me, which triggered my request for more details on the file bearing in mind that I have never sat in the Court of Appeal at Kisumu.

2. This long delay is worrying. A court registry is the backbone of a functioning judiciary, serving as the critical interface between the public, legal professionals, and the court. It is often described as the “heart of the court.” Responsible for managing the entire lifecycle of a case, from initial filing to final disposition. Without an efficient registry, the judiciary cannot dispense justice in a timely manner. Such a delay is more than a mere administrative lapse; it is a profound failure that undermines the rule of law and mocks the constitutional guarantee of access to courts. For the litigants, the long-awaited resolution has been clouded by the anxiety of uncertainty, serving as a stark reminder that justice delayed is, in the most literal sense, justice denied. I begin this ruling by regrettably acknowledging this failure.
3. I now turn to the application. **MIWANI SUGAR COMPANY (1989) LIMITED [IN RECEIVERSHIP] (the applicant)** approached this court by way of the Notice of Motion dated 7<sup>th</sup> December 2021 seeking leave to amend the Notice of Appeal dated the 7<sup>th</sup> October 2021 and lodged with the Superior Court on even date against the judgment and decree of the Superior Court dated the 30<sup>th</sup> September 2021 in terms of the annexed Amended Notice of Appeal, and, that the Amended Notice of Appeal be deemed to have been duly and properly filed.

4. The application is premised on Article 159 of the Constitution, Sections 3, 3A, & 3B of Appellate Jurisdiction Act and Rules 16 & 44 of Court of Appeal Rules 2022. It is supported by grounds on its body and the annexed supporting affidavit sworn on 7<sup>th</sup> December 2025 by David Otieno who is the counsel on record for the applicant.
5. The grounds in support of the application are that: (a) the notice of appeal makes reference to the judgment of the court and mistakenly indicates that the judgment was delivered on 15<sup>th</sup> March 2020 which is a typographical error since the judgment was delivered on 30<sup>th</sup> September 2021; (b) the typographical error was an oversight on the part of counsel and no prejudice will be suffered by any party; (c) the application was filed immediately the attention of counsel was drawn to the mistake.
6. The application is not opposed. Although the 1<sup>st</sup> respondent has filed submissions dated 16<sup>th</sup> March 2022 opposing the same.
7. According to the applicant it was only when they were served with a Notice of Preliminary objection by counsel for the respondent on 6<sup>th</sup> December 2021 that they discovered the typographical error on the notice of appeal. Counsel maintained that the error was not noticed by the Deputy Registrar of the Superior Court who signed the Notice of Appeal. Since there was only one judgment that was being appealed against, no prejudice would be suffered by the respondent. Furthermore Rule 44(1) of this Court's Rules permits amendment of a notice of appeal. To buttress his submission, counsel cited the case of **William Ngare & 4 others v Public Trustee & 10 others [2012] eKLR**.
8. According to the 1<sup>st</sup> respondent, it is patently clear that the applicant was aggrieved by the decision rendered on 15<sup>th</sup> March 2020 and filed a Notice of Appeal dated 7<sup>th</sup> October 2021. Since the notice of appeal dated, 7<sup>th</sup> October 2021 does not relate to the impugned judgment delivered on 30<sup>th</sup> September 2021 and having been brought under Rule 74 of the Court of Appeal Rules,

which is irrelevant, then on that ground alone the Notice of Appeal is incompetent, null and void. Therefore, the Notice of Appeal dated 1<sup>st</sup> October 2021 is also a nullity and the court cannot be asked to bring something out of nothing.

9. To buttress his submissions, counsel cited the case of ***Nicholas Kiptoo Arap Korir Salat vs Independent Electoral and Boundaries Commission & 7 Others [2014] eKLR***, in which the Court held: "*A Notice of Appeal is a primary document to be filed outright whether or not the subject matter under appeal is that which requires leave or not. It is a jurisdictional pre-requisite.*"
10. I have considered the application, the affidavit on record and submissions by counsel and the law. The only question for determination is whether the applicant has met the threshold for grant of leave to amend the notice of appeal dated 7<sup>th</sup> October 2021.
11. Rules 16 (1) and 44 of the Court of Appeal Rules, 2010 provides for form of amendments and applications for leave to amend and provides thus:

**16. Form of amendments**

1. ***Where any person obtains leave to amend any document, the document itself may be amended or, if it is more convenient, an amended version of the document may be lodged.***

**44. Applications for leave to amend**

1. ***Whenever a formal application is made to the Court for leave to amend any document, the amendment for which leave is sought shall be set out in writing and, if practicable, lodged with the Registrar and served on the respondent before the hearing of the application or, if that is not practicable, handed to the Court and to the respondent at the time of the hearing.***

12. It is evidently clear that the amendment sought to be made is an error on the date of the judgment sought to be appealed from, by stating that the judgment was delivered on the 15<sup>th</sup> March 2020 instead of 30<sup>th</sup> September, 2021. It is

noteworthy that the 1<sup>st</sup> respondent having failed to file a replying affidavit to

the application, it squandered an opportunity to demonstrate the prejudice it would suffer if the instant application is allowed. Nevertheless, the objective of the rules of the court and more importantly **sections 3A** and **3B** of the **Appellate Jurisdiction Act** is to facilitate the just and fast disposal of cases and justice devoid of undue regard to technicalities.

13. The upshot of the foregoing is that the error committed by the applicant is excusable and the applicant is deserving of the discretionary orders of this court. Accordingly, the applicant's application dated 7<sup>th</sup> December 2021 is granted as prayed. The applicant is granted leave to amend the Notice of Appeal dated 7<sup>th</sup> October 2021 within 7 days from the date of delivery of this ruling.

**DATED AND DELIVERED AT KISUMU THIS 30<sup>TH</sup> DAY OF MARCH, 2026.**

**J. MATIVO**

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**JUDGE OF APPEAL**

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

***Signed***  
**DEPUTY REGISTRAR**