



**Kariuki v Kagunda (Environment and Land Appeal 38 of 2018)
[2024] KEELC 993 (KLR) (26 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 993 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL 38 OF 2018
BM EBOSO, J
FEBRUARY 26, 2024**

BETWEEN

PETER NJUGUNA KARIUKI APPELLANT

AND

JAMES NJOGU KAGUNDA DEFENDANT

RULING

1. On 1/3/2022, James Njogu Kagunda [the applicant] lodged a notice of appeal dated 1/3/2022 with the Deputy Registrar of this court, intimating his intention to appeal against the post-judgment decision of Eboso J rendered in this appeal on 24/2/2022. Subsequent to that, he brought a notice of motion dated 1/4/2022 inviting this court to exercise jurisdiction over the notice of appeal and grant him the following orders: (i) an order granting him leave to amend the notice of appeal; and (ii) an order that the draft amended notice of appeal annexed to the said application be deemed as duly filed upon payment of the requisite court fees. The said application is the subject of this ruling.
2. On 23/5/2023, the court directed the applicant to tender submissions on the question of jurisdiction of this court to grant leave to amend the notice of appeal that was lodged with the Deputy Registrar of this court under rule 75(1) of the *repealed Court of Appeal Rules 2010* and transmitted to the appropriate Registry of the Court of Appeal under rule 76 of the said repealed rules. It is noted that rules 77(1) and rule 78 of the *Court of Appeal Rules 2022* [the current Rules] have similar frameworks relating to lodging and transmission of notices of appeal. The Court of Appeal Rules 2022 came into force on 8/7/2022.
3. The applicant's counsel was not able to make oral submissions. On 4/7/2023, the applicant's counsel requested for time to research on the issue of jurisdiction. The court gave fresh directions granting the applicant time within which to file and serve written submissions on the issue and on the application. The applicant subsequently filed written submissions dated 3/10/2023 through M/s Kanyi Kiruchi & Company Advocates.



4. Before venturing into the merits of the application, this court is required to pronounce itself on the question as to whether it has jurisdiction to grant the orders that are sought in the application under consideration. This approach is guided by the principle that, jurisdiction is everything, and that in the absence of jurisdiction, the court is required to down its tools.
5. Nyarangi JA outlined the above principle in *Owners of the Motor Vessel Lilian 'S' V Caltex Oil (k) Ltd* [1989] 1 KLR as follows:

“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 downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”
6. Does this court have jurisdiction to grant the orders sought? The court exercised appellate jurisdiction in this appeal. It rendered a Judgment in the appeal on 8/4/2021. Subsequent to that, the respondent, James Njogu Kagunda, brought a notice of motion dated 3/9/2021 seeking an order enlarging the time within which to lodge a notice of appeal against the said Judgment. Exercising the jurisdiction granted to this court under Section 7 of the *Appellate Jurisdiction Act*, this court granted the respondent an extension of 10 days through a ruling rendered on 24/2/2022.
7. The respondent subsequently lodged a notice of appeal dated 1/3/2022 intimating his intention to appeal against the decision of this court [Eboso J] rendered on 24/2/2022. He did not lodge a notice of appeal relating to the Judgment of this court [Gacheru J] rendered on 8/4/2021. He contends that he made an error in that whereas he intended to lodge a notice of appeal against the Judgment rendered by Gacheru J on 8/4/2021, he erroneously lodged a notice of appeal against the ruling rendered by Eboso J on 24/2/2022. He wants this court to exercise jurisdiction and grant him leave to amend the defective notice of appeal.
8. I have looked at the submissions which the applicant tendered, dated 3/10/2023. Counsel did not cite any legal framework which vests jurisdiction in this court to grant leave to an appellant in the Court of Appeal to amend a notice of appeal that is before the Court of Appeal. Counsel for the applicant submitted that the notice of appeal was filed pursuant to rule 36(1) of the *Supreme Court Rules* 2020 [sic]. I do not think that rule 36(1) of the *Supreme Court Rules* vests in this court the jurisdiction that the applicant invited this court to exercise. I also do not think the *Supreme Court Rules* would apply to the application under consideration. Suffice it to state that, as at 1/3/2022, a notice of appeal against a decision of this court was required to be lodged under rule 75 (1) of the *Court of Appeal Rules* 2010 [now repealed]. Under the current Rules, a similar notice of appeal would be lodged under rule 77 (1) of the *Court of Appeal Rules* 2022. Reliance on the Supreme Court Rules 2020 [sic] is a misapprehension of the law.
9. Counsel for the applicant further contended that as long as a pleading has been filed in this court, this court has jurisdiction to have the pleading amended, adding that the Court of Appeal cannot have jurisdiction to interfere with a document that was filed in this court.
10. What did or does the law provide on this issue? Rules 75 and 76 of the *Court of Appeal Rules* 2010 provided as follows:
 - (1) Any person who desires to appeal to the Court shall give notice in writing, which shall be lodged in duplicate with the registrar of the superior court.
 - (2) Every such notice shall, subject to rules 84 and 97, be so lodged within fourteen days of the date of the decision against which it is desired to appeal.



- (3) Every notice of appeal shall state whether it is intended to appeal against the whole or part only of the decision and where it is intended to appeal against a part only of the decision, shall specify the part complained of, shall state the address for service of the appellant and shall state the names and addresses of all persons intended to be served with copies of the notice.
- (4) When an appeal lies only with leave or on a certificate that a point of law of general public importance is involved, it shall not be necessary to obtain such leave or certificate before lodging the notice of appeal.
- (5) where it is intended to appeal against a decree or order, it shall not be necessary that the decree or order be extracted before lodging notice of appeal.
- (6) A notice of appeal shall be substantially in the Form D in the First Schedule and shall be signed by or on behalf of the appellant.

76. On receipt of a notice of appeal, the registrar of the court shall forthwith send one copy thereof to the appropriate registry.”

11. Rules 77 and 78 of the *Court of Appeal Rules* 2022 provide as follows:

- (1) A person who desires to appeal to the Court shall give notice in writing, which notice shall be lodged in two copies, with the registrar of the superior court.
- (2) Each notice under sub-rule (1) shall, subject to rules 84 and 97, be lodged within fourteen days after the date of the decision against the decision for which appeal is lodged.
- (3) Each notice of appeal under sub-rule (1) shall state whether it is intended to appeal against the whole or part only of the decision and, where it is intended to appeal against a part only of the decision, shall—
 - (a) specify the part complained of;
 - (b) the address for service of the appellant; and
 - (c) the names and addresses of the persons intended to be served with copies of the notice.
- (4) When an appeal lies only with leave or on a certificate that a point of law of general public importance is involved, it shall not be necessary to obtain such leave or certificate before lodging the notice of appeal.
- (5) Where it is intended to appeal against a decree or order, it shall not be necessary that the decree or order be extracted before lodging the notice of appeal.
- (6) A notice of appeal shall be substantially in Form D as set out in the First Schedule and signed by or on behalf of the appellant.

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78. On receipt of a notice of appeal under rule 77, the registrar of the court shall send one copy of the notice to the appropriate registry.”

12. My understanding of the above frameworks is that the Registrar of the Environment and Land Court was and is empowered to receive a notice of appeal from a party intending to appeal against a decision of the court. Upon receiving the notice of appeal, the Registrar of the Environment and Land Court is required to transmit the notice of appeal to the relevant Registry of the Court of Appeal. The above framework does not vest jurisdiction in a Judge of this Court to grant leave to any party to amend an



otherwise defective notice of appeal that has been lodged with the Registrar of the Court and has been transmitted to the relevant Registry of the Court of Appeal.

13. The Registrar's role is purely to receive and transmit the notice of appeal to the relevant Registry of the Court of Appeal. The court judicially seized of the notice of appeal lodged and transmitted under the above framework is the Court of Appeal. This court cannot, in the circumstances, purport to exercise judicial jurisdiction to grant leave to an appellant to amend an otherwise defective pleading in a matter that the Court of Appeal is seized of.
14. Our courts have umpteen times emphasized that jurisdiction is conferred by the Constitution or legislation or both. Not too long ago, the Supreme Court of Kenya emphasized this point in the case of Samuel Kamau Macharia & Another v KCB Ltd & 2 others (2012) eKLR, in the following words:

“ A court's jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”
15. For the above reasons, it is the finding of this court that the Environment and Land Court does not have jurisdiction to grant leave to an appellant to amend a notice of appeal that has been received by the Registrar of the Court and has been transmitted to the relevant Registry of the Court of Appeal. Consequently, the notice of motion dated 1/4/2022 is struck out for want of jurisdiction on part of this court.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 26TH DAY OF FEBRUARY 2024

B M EBOSO

JUDGE

In the presence of: -

Ms Kanja for the Appellant

Mr. Wachira for the Respondent

Court Assistant: Hinga

