



Nakuru War Memorial Hospital Ltd v County Government of Nakuru & 2 others (Civil Appeal (Application) E130 of 2024) [2025] KECA 521 (KLR) (21 March 2025) (Ruling)

Neutral citation: [2025] KECA 521 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPEAL (APPLICATION) E130 OF 2024
MA WARSAME, JM MATIVO & PM GACHOKA, JJA
MARCH 21, 2025**

BETWEEN

NAKURU WAR MEMORIAL HOSPITAL LTD APPLICANT

AND

COUNTY GOVERNMENT OF NAKURU 1ST RESPONDENT

LAND REGISTRAR NAKURU 2ND RESPONDENT

HON. ATTORNEY GENERAL 3RD RESPONDENT

RULING

1. By an application dated 6th November 2023, Nakuru War Memorial Hospital Ltd. (the applicant) instituted Judicial Application No. 1 of 2024, (formerly Nakuru J.R. No. 7 of 2023) at the Environment and Land Court (ELC), Nyandarua, against the 2nd and 3rd respondents seeking orders to quash Gazette Notice No.6309 of 19th May 2023 which had cancelled the certificate of lease for all that parcel of land known as Nakuru Municipality Block/11/107. It also prayed for an order of prohibition against the 2nd and 3rd respondents prohibiting them from in any manner dealing with the said title.
2. During the pendency of the said application, the County Government of Nakuru (the 1st respondent) filed an application dated 2nd November 2023 seeking leave to be joined as an interested party in the said proceedings and leave to file a response to the application. Its key ground was that, it was the legitimate custodian of the suit property following expiry of the applicant's lease in 2019. It contended that the applicant secretly and fraudulently obtained an extension of the lease in 2021 without its involvement. However, by a ruling dated 13th June 2024, Angima, J. dismissed the said application for being devoid of merit on grounds inter alia that the 1st respondent did not demonstrate that it had an identifiable stake in the suit. The learned Judge was also not satisfied that the 1st respondent will suffer any prejudice and added that any decision made in the proceedings will only bind the parties in the said suit.



3. By a judgment delivered on 18th July 2024, the learned Judge allowed the applicant's judicial review application and granted the writ of certiorari as prayed. The 1st respondent promptly filed a notice of appeal signifying its intention to appeal against the said decision. On 16th September 2024, the 1st respondent filed this appeal citing 10 grounds of appeal essentially beseeching this Court to set the said judgment aside.
4. The institution of the 1st respondent's notice of appeal and this appeal elicited the applicant's application dated 9th October 2020, the subject of this ruling. The application is brought under Rule 86 (a) & (b) of the Court of Appeal Rules, 2022. It prays that the appeal be struck out on grounds that the 1st respondent was not a party to Nyandarua ELC Judicial Review No. 1 of 2024, Republic vs. Land Registrar Nakuru & Another ex-parte Nakuru War Memorial Hospital and that the 1st respondent's application seeking to be joined as an interested party in the said suit was dismissed vide ruling delivered on 13th June 2023, and no appeal has ever been preferred against the said ruling.
5. The applicant further avers that subsequently, the trial court delivered its final judgment in the said suit on 18th July 2024 allowing the judicial review application. It contends that the 1st respondent purported to file a notice of appeal dated 18th July 2024, which has never been served upon the applicant. The gravamen of the applicant's contestation is that a person who was not a party in court proceedings cannot purport to appeal against a decision emanating from the suit and therefore the instant appeal is an abuse of the court process.
6. Despite being served, none of the respondents filed a replying affidavit. However, the 1st respondent filed written submissions dated 28th October 2024, while the 2nd and 3rd respondents filed submissions dated 10th November 2024.
7. In support of the application, the learned counsel for the applicant Mr. Karanja submitted that the 1st respondent lacks the locus standi to institute this appeal. Counsel maintained that the 1st respondent illegally and un-procedurally lodged this appeal against the judgment dated 18th July 2024 without seeking leave and is now attempting through the back door to appeal against the ruling dated 13th June, 2024 which ruling was declined by the trial court. Counsel cited this Court's decision in Attorney General vs. Bala (Civil Appeal No. 233 of 2017) eKLR that the right of appeal is a creature of statute and an appeal can be presented by a person who was not a party but who was aggrieved by the judgment if he sought and got leave of the Court to appeal against the judgment.
8. Mr. Karanja also cited the case of Centre for Rights Education and Awareness & Another vs. John Harun Mwau & 6 Others (2012) eKLR in support of his submission that the 1st respondent must demonstrate that it is directly affected by the decision appealed against for it to be allowed to appeal.
9. Regarding the issue of costs, Mr. Karanja maintained that the 1st respondent ought to be condemned to bear the costs of its incompetent appeal.
10. The 1st respondent's case as we discern from its written submissions is that notwithstanding the fact that its application for joinder was dismissed, the trial court's judgment adversely mentioned it as the one laying a claim to the land in question, hence in effect recognizing its stake in the case. Learned counsel Mr. Okora holding brief for Prof. Tom Ojienda, counsel on record for the 1st respondent maintained that their notice of appeal and memorandum of appeal are properly on record because they were timely filed and served in accordance with the Court of Appeal Rules, 2022.
11. Counsel submitted that having been aggrieved by the said judgment, the 1st respondent has the requisite locus standi to file the instant appeal pursuant to Rule 77 (1) of the Court of Appeal Rules, 2022. For authority, he cited Kamlesh Mansukhlal Damji Patini vs. Sterwood Hotel & Rosash World



Wide Inc. & 7 Others CA. NAI 330 of 2001 in support of the proposition that a party who is directly affected by a court order is allowed to appeal against the decision.

12. The 2nd and 3rd respondents submitted that the 1st respondent stands to be prejudiced if it is denied the right of appeal since the consequential orders emanating from the impugned judgment would materially and substantially affect it. Conversely, the 2nd and 3rd respondents maintained that it has not been shown that the applicant is likely to suffer any prejudice should the 1st respondent be allowed to appeal; therefore, it is only just in the circumstances that the 1st respondent be allowed to appeal against the said judgment.
13. A useful starting point in this determination is to mention that the fundamental principle is that a party directly affected by a court's decision (a decree or order) has the right to appeal against that decision to a higher court even if he was not a party to the proceedings which gave rise to the decision. The jurisdiction of this is conferred by Article 164 (3) of *the Constitution* and Section 3 of the *Appellate Jurisdiction Act*. The above provisions do not make any reference to a party to the proceedings in the High Court and there is nothing from the words that ought to lead to an interpretation that limits the right of appeal to parties in the suit only. However, the right to appeal to this Court is not absolute and is governed by specific provisions and limitations outlined in the applicable law and the Court of Appeal Rules, 2022. Rule 77 (1) of the Court of Appeal Rules, 2022, provides:

“(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.”

14. The word "person" in the above rule is not qualified by the words "who was a party to the proceedings in the lower court." If it had been intended to restrict an "appellant" to a person who was a party in the lower court, one would have expected the draftsman so to provide expressly. However, we must caution that the above provision is not an open license for any person or a busy body to appeal to this Court against any decision. Much as the above rule only talks of "a person who desires to appeal", an appeal can be filed only if a person is "adversely affected" or "aggrieved" by the decision. By delineating the scope of appellate jurisdiction and affirming the rights of individuals directly affected by a court decision, the law ensures that legal remedies remain accessible to those legitimately impacted. As the Supreme Court of Ghana (Wood JSC) in *Republic vs. High Court, Ho Ex parte Awusu (No.1) (Nyonyo Agboada (Sri III) Interested Party) [2003-2004] SCGLR. 864* stated, the word "aggrieved" came up, not out of the provision of a statute, but in connection with the locus standing of a non-party. At page 878 of the Report, the legal luminary said as follows:

“By “person aggrieved” is meant the person directly affected by the order complained of. In real terms then, he is the person against whom the order is directed, or whose legal rights have been infringed by the order impugned or who has any other legally recognizable or substantial interest in the impugned order.”

15. A person who is likely to be affected by a Court decision has the locus standi to institute an appeal against the decision notwithstanding the fact that he was not a party to the proceedings. This Court in *Law Society of Kenya, Nairobi Branch vs. Malindi Law Society & 6 Others [2017] eKLR* had the following to say:
 25. It seems to us from that interpretation that the issue as to who has locus standi before a court of law has now been crystallized. It is any aggrieved party.
 26. This brings us to the applicability of Rule 75 of the Rules of this Court. It provides:



75 (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.” [Emphasis added]

26. The Rule is specific about “a person who desires to appeal” and not a party to the impugned decision. Halsbury’s Laws of England’s 4th Edition Para. 49 page 52, has this to state on locus standi:

“In order to maintain proceedings successfully, a plaintiff or applicant must show not only that the court has power to determine the issue, but also that he is entitled to bring the matter before the court.....In other contexts, locus standi depends primarily on the nature of the remedy or relief soughta right of appeal..... is frequently confined to a “ person aggrieved” or a person who claims to be or feels aggrieved....”

26. Paragraph 66 page 92 of the same treatise defines an aggrieved party as follows: -

“The meaning of a person aggrieved may vary according to the context. However, as a matter of general principle, any person who has a decision decided against him (particularly in adversarial’ proceedings) will be a person aggrieved for the purposes of appealing against that decision....”

16. Therefore, this application will stand or fall not on the ground that the 1st respondent’s application to be joined in the primary proceedings before the trial court was dismissed as the applicant’s counsel invited us to find, but on the question whether or not the 1st respondent has demonstrated to this Court’s satisfaction that it is adversely affected by the said judgment. The mere fact the 1st respondent’s application for joinder was dismissed by the trial court cannot in all fairness be a bar to appealing against the decision if it is demonstrated that the judgment adversely affects the 1st respondent.
17. The issue before us now narrows to whether the 1st respondent demonstrated that it has been or it is likely to be aggrieved or adversely affected by the judgment delivered on 18th July 2024. Generally, a “person aggrieved” is someone who experiences a specific and direct negative consequence or injury as a result of a decision, order, or decision of a lower court. In searching for the answer on the question whether the 1st respondent has satisfied this test, we bear in mind that the 1st respondent did not file a reply to this application at least to expound on how it is likely to be adversely affected by the judgment. Therefore, the 1st respondent deprived this Court the benefit of evaluating how it is likely to be adversely affected by the judgment.
18. Nevertheless, we have meticulously gone through the entire judgment sought to be appealed against. As mentioned earlier, the judicial review application in which the applicant sought for orders of certiorari was triggered by the 2nd respondent’s publication of Gazette Notice no. 6309 dated 19th May 2023 cancelling the applicant’s certificate of lease for the suit property on the ground that it had been issued erroneously. In refusing the 1st respondent’s application for joinder, the learned Judge stated:

“ 17.... It must be remembered that the question of who is the legitimate owner of the suit property can only be resolved in the pending civil suit viz Nakuru ELC No. 36 of 2023 (now Nyandarua ELCLC No. 3 of 2024). It is evident from the material on record that the intended Interested Party is one of the Defendants in that suit which is pending hearing before this court. The intended Interested Party shall thus have an opportunity to give its side of the story and to demonstrate that it is the legitimate owner or holder of the suit property.” (Emphasis added).



19. We note that the impugned judgment does not in any way adversely mention or affect the 1st respondent. Importantly, no adverse orders were issued against the 1st respondent. The learned Judge ordered as follows:
- a. An order of certiorari be and is hereby granted to bring up and quash the decision of the 1st respondent made vide Kenya Gazette Notice No. 6309 dated 19. 05. 2023 in respect of cancellation of the certificate of lease of parcel No. Nakuru Municipality Block 11/107 in the name of Nakuru War Memorial Hospital Limited.
 - b. The prayer for an order of prohibition is hereby declined.
 - c. Each party shall bear its own costs of the application for judicial review.
20. We do not see finding adversely affecting the 1st respondent in the above orders. Clearly, the learned Judge only quashed the Gazette Notice no. 6309 dated 19.05.2023 having found that the Land Registrar had no legal authority to revoke, cancel or nullify a certificate of lease or other title document on the basis that it was obtained through fraud or improper and unlawful means and that the 2nd respondent acted without or in excess of jurisdiction. As the learned Judge correctly observed in the excerpt reproduced at paragraph 21 above, the question of who is the legitimate owner of the land will be resolved in Nakuru ELC No. 36 of 2023 (now Nyandarua ELCLC No. 3 of 2024). Importantly, the learned Judge noted that the 1st respondent is one of the defendants in the said suit pending hearing before the same court, therefore, the 1st respondent will have an opportunity to advance its case in the said suit. We entirely agree with the said observation.
21. Lastly, we are not persuaded that the 1st respondent has demonstrated that it is aggrieved or likely to be adversely affected by the said judgment in order to possess the requisite locus standi to appeal against the judgment dated 18th July 2024. Accordingly, we find merit in the applicant's notice of motion dated October 9, 2024, which we hereby allow. The effect is that Civil Appeal No. E130 of 2024 filed on September 16, 2024, is struck out with costs to the applicant.

DATED AND DELIVERED AT NAKURU THIS 21ST DAY OF MARCH, 2025.

M. WARSAME

..... **JUDGE OF APPEAL**

J. MATIVO

..... **JUDGE OF APPEAL**

M. GACHOKA CIArb, FCIArb.

..... **JUDGE OF APPEAL**

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

Signed.

DEPUTY REGISTRAR

