

**IN THE COURT OF
APPEAL AT NAIROBI**

**(CORAM: MUMBI NGUGI, JA (IN
CHAMBERS)) CIVIL APPLICATION NO. NAI
E564 of 2024 BETWEEN**

CLAIR NYABAYO.....APPLICANT

AND

SHOP & DELIVER LIMITED/ABETIKA.....RESPONDENT

*Being an application for leave to appeal against the judgment/
decree of the High Court of -Kenya at Nairobi (A. Mabeya FCI Arb.
J.) dated 10th September 2024*

in
Civil Appeal No. E191 of 2023)

RULING

1. By her application dated 18th October 2024, the applicant, **Clair Nyabayo**, asks this Court to grant her leave to lodge an appeal to this Court from the judgment of the High Court (Mabeya J.) in Civil Appeal No. E191 of 2023. The applicant also asks the Court to enlarge and/or extend the time within which she may lodge an appeal against the said judgment.
2. The application is brought under Article 48, 159(2) and 164(3) of the Constitution, section 3A and 3B of the

Appellate

Jurisdiction Act, and rules 43 and 44 of the Court of Appeal Rules, 2022.

3. The application is based on the grounds on its face and a supporting affidavit sworn by the applicant on 18th October 2024. The applicant avers that the subject matter of the intended appeal originates from quasi-judicial proceedings conducted by the Betting Control and Licensing Board in relation to a complaint she had lodged against the respondent, and in respect of which she seeks a determination on fair and just conduct of such proceedings. She further avers that the said quasi-judicial proceedings were conducted irregularly and unlawfully, thus violating her right to a fair hearing and access to justice.
4. The applicant avers that a determination on fair and just conduct of quasi-judicial proceedings relating to complaints filed before the Betting Control and Licensing Board would substantially affect the rights of the general public, and she therefore filed **Civil Appeal No. E191 of 2023** before the High Court, which resulted in the impugned judgment. She avers that the decision of the High Court is manifestly wrong and raises glaring

procedural and substantive legal issues which

have occasioned substantial miscarriage of justice against her. The applicant further complains that the learned judge was manifestly wrong in finding that the applicant failed to include the alleged terms and conditions of the subject game in her Record of Appeal when the applicant was not supplied with a copy of the said terms and conditions by the Betting Control & Licensing Board, either during or subsequent to the hearing, and has never had sight of the same to date.

5. The applicant acknowledges that section 62 of the Betting, Lotteries and Gaming Act, Chapter 131 of the Laws of Kenya, provides that a judgment of the High Court on an appeal arising from a decision of the Board shall not be subject to further appeal. She avers that this provision expressly locks her out from challenging the impugned decision of the High Court. She avers that her application is brought in good faith and without unreasonable delay, and it is in the interests of justice for it to be allowed.
6. In response to the application, the respondent has filed an affidavit sworn on 30th January 2025 by Paul Mutegi, the respondent's Group General Counsel, and Grounds of Opposition dated 28th November 2024. The gist of the

respondent's case is that the applicant has no right of appeal to this Court from a decision of the High Court acting on appeal from a decision of the Board.

7. The parties hereto have filed submissions dated 20th December 2024 and 31st January 2025 respectively, which I have read and considered.
8. 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.

9. The applicant recognizes the limits placed on this Court by the above provision. She submits, however, citing the decision of the Supreme Court in **Francis Karioko**

**Murutetu & Another vs Republic [2017] eKLR and
Nyutu Agrovat**

Limited v Airtel Networks Kenya Limited: Chartered Institute of Arbitrators - Kenya Branch (2019) KESC

11 (KLR) , that her intended appeal, from the facts set out in her affidavit in support of the application and which remain uncontroverted by the respondent, presents special circumstances that warrant grant of leave to file an appeal to this Court.

10. On its part, the respondent refers this Court to the decision in Attorney General v Bala (Civil Appeal 223 of 2017) [2023] KECA 117 (KLR) (3 February 2023) (Judgment) in which this Court stated:

“14. The right to appeal is a creature of statute and an appeal can be presented, only: (i) by a party in the suit if he is aggrieved by the judgment; or (ii) by a person who is not a party but who is aggrieved by the judgment if he seeks and gets leave of the court to prefer an appeal against the judgment. Unless a right of appeal is clearly and expressly given by statute, it does not exist. Whereas a litigant has a right to institute any suit of a civil nature in some court or another, no right of appeal can be given except by express words. In other words, a right of

appeal infers (sic) ***in***

no one and therefore an appeal for its maintainability must have the clear authority of law. The right of appeal, which is a statutory right, can be conditional or qualified. If the statute does not create any right of appeal, no appeal can be filed.
(Emphasis added).

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

Dated and delivered at Nairobi this 7th day of March, 2025.

MUMBI NGUGI

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

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

Signed

DEPUTY

REGISTRAR.