



REPUBLIC OF KENYA



KENYA LAW
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**Cherop v Bowen (Civil Application E056 of 2024)
[2025] KECA 1240 (KLR) (11 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1240 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CIVIL APPLICATION E056 OF 2024
WK KORIR, JA
JULY 11, 2025
[IN CHAMBERS]**

BETWEEN

SHARON JEMUTAI CHEROP APPLICANT

AND

MATHEW BOWEN RESPONDENT

(Being an application for leave to file a notice and record of appeal out of time against the ruling of the High Court of Kenya at Eldoret (R. Nyakundi, J.) dated 13th June 2024 in HCCC No. E009 of 2024 (O.S.))

RULING

1. In the notice of motion dated 13th September 2024 the applicant, Sharon Jemutai Cherop, seeks leave to file both a notice of appeal and a record of appeal out of time against a ruling delivered on 13th June 2024 by Nyakundi, J. The motion, which is supported by the applicant's affidavit, is premised on the ground that upon delivery of the impugned ruling, the applicant pursued a review application instead of an appeal. She avers that despite having high chances of success, the review application dated 10th July 2024 was dismissed on 21st August 2024, necessitating the filing of the present application. She also avers that the intended appeal has high chances of success and that she stands to suffer substantial injustice should the application not be allowed.
2. The application was not opposed. As of 7th May 2025, when the application was slated for hearing, none of the parties had filed submissions as directed.
3. I am aware of the principles set by the Supreme Court in *Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] KESC 12 (KLR) for consideration in applications for extension of time. However, in the circumstances of this case, there is a long line of authorities from this Court to the effect that once a party files an application for review and prosecutes it to conclusion, the party loses the



option of pursuing an appeal in respect of the decision that was sought to be reviewed. For instance, in *Rafiki Microfinance Bank Limited v Youth Enterprise Development Fund Board* [2024] KECA 239 (KLR), the Court held that:

“In this case, the appellant having sought to review the judgment and decree cannot now purport to appeal against the same after its review application was dismissed. It can only appeal against the ruling and order on its application for review made on 11th November 2021. Further and as we have already demonstrated, the notice and record of appeal in respect of the impugned judgment and decree were both filed way out of time.”

4. The same views were restated in *Cabinet Secretary, Ministry of Lands, Housing and Urban Development (Formerly Known as the Hon Minister For Lands) & 2 Others v Osman On His Own Behalf and on Behalf of 1,122 Evictees of Medina Location, Municipal Council of Garissa) & Another; Global Initiative for Economic Rights Socio-Economic Rights Institute Community Law Centre For Economic and Social Rights Centre for Equality Rights in Accommodation Social Rights Advocacy Centre Malcolm Langford (Amicus Curiae)* [2024] KECA 1715 (KLR) thus:

“36. It suffices to state that once the appellants file an application for review and prosecuted it to conclusion, there was no option open for the appellants to proceed with the appeal to conclusion... The appellants cannot have their cake and eat it. We agree with Mr. Muriithi that the only recourse the appellants had was to appeal the ruling that dismissed the application for review...”

38. Accordingly, we associate ourselves with the decision in *The Chairman Board of Governors Highway Secondary School v William Mmosi Moi (supra)* that both options cannot be pursued concurrently or one after the other. To find otherwise would amount to giving the Court’s seal of approval to persons who wish to play lottery with judicial process.”

5. The Supreme Court expressed the same position of the law in *University of Eldoret & Another v Sitienei & 3 Others* [2020] KESC 76 (KLR) when it held that:

“It is evident that following the decision of the Court of Appeal, the applicants were faced with two options – to, either file for review of the decision to the same Court or pursue an appeal before this Court within either of the applicable jurisdictional contours. The applicants, as advised by their advocates, chose the former. We agree with the applicants’ advocates that they could not concurrently pursue both options as that would be an outright abuse of judicial process. However, following from our decision in *Fahim Yasin Twaha v. Timamy Issa Abdalla & 2 Others* [2015] eKLR, where a litigant has more than one option to pursue, he/ she must settle on one of them. The decision on which course to pursue is taken in advance and once it is taken, the other option is no longer available or placed in abeyance to be reverted to at a later stage in the event the initial option does not succeed. This means that when choosing, the litigant is expected to choose the best available option since she may not have any further recourse.”

6. From the foregoing, it is clear that appeals and reviews cannot be pursued concurrently and even consecutively. The present application seeks an enlargement of time to allow the applicant to pursue an appeal after her application for review of the decision she intends to appeal was dismissed. It is therefore important to appreciate that granting the request for enlargement of time would amount to



an exercise in futility, as no appeal would lie in light of the concluded review application. With that in mind, the fate of motion is sealed. It is for dismissal.

7. Consequently, I find no merit in this motion, and dismiss it. There being no response to this application, I shall make no orders as to costs.

DATED AND DELIVERED AT NAKURU THIS 11TH DAY OF JULY, 2025.

W. KORIR

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JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR

