



UAP Insurance Company Limited v Summit Cove Lines Company Limited (Civil Application E105 of 2023) [2024] KECA 557 (KLR) (24 May 2024) (Ruling)

Neutral citation: [2024] KECA 557 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CIVIL APPLICATION E105 OF 2023**

KI LAIBUTA, JA

MAY 24, 2024

BETWEEN

UAP INSURANCE COMPANY LIMITED APPLICANT

AND

SUMMIT COVE LINES COMPANY LIMITED RESPONDENT

(Being an application for extension of time to serve the Notice of Appeal and lodge and serve the Record of Appeal out of time against the Ruling and Orders of the High Court of Kenya at Mombasa (F. Wangari, J.) dated 27th October 2023 in HCCC No. 43 of 2017)

RULING

1. Before me is a Notice of Motion dated 27 November 2023 in which the applicant, UAP Insurance Company Limited, seeks extension of time to “serve the Notice of Appeal and to lodge and serve a Record of Appeal” out of time against the ruling and orders of the High Court of Kenya at Mombasa (F. Wangari, J.) dated 27th October 2023 in HCCC No. 43 of 2017. The applicant’s Motion is supported by the annexed affidavit of George Ndung’u, learned counsel for the applicant, sworn on 27th November 2023, and is made on 13 grounds set out on the face of the Motion, but to which I need not address myself presently.
2. A quick look at the applicant’s Motion reveals that, apart from the letter bespeaking proceedings and the undated draft memorandum of appeal annexed to the application for extension of time, no notice of appeal has been lodged in compliance with the mandatory provisions of rules 77 and 79 of the [Court of Appeal Rules](#).



3. Addressing itself to the mandatory requirement to file and serve a notice of appeal, the Supreme Court in *University of Eldoret and another vs. Hosea Sitienei and three others* [2020] eKLR observed at para 36:

“The filing of a notice of appeal is not premised on any occurrence or condition to be fulfilled by the appellant. The filing of a notice of appeal signifies the intention to appeal.”
4. On the authority of the *University of Eldoret and Sitienei case* (ibid), it is true to say that, in the absence of a notice of appeal properly on record, the applicant herein is yet to express its intention to appeal. Citing the Supreme Court decision in *Nicholas Kiptoo Arap Korir Salat vs. Independent Electoral and Boundaries Commission and 7 others* [2014] eKLR, this Court had this to say in *Apungu Arthur Kibira vs. Independent Electoral and Boundaries Commission and 2 others* [2018] eKLR:

“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.”
5. In so far as a notice of appeal is a jurisdictional pre-requisite, nothing flows from a non-existent notice to invoke this Court’s jurisdiction to grant the orders sought pursuant to Rule 4 or any other Rule. In effect, its hands are tied, so to speak. I so hold cognisant of the general principle that it is only in exceptional circumstances that this Court would raise its hand to slam shut the door to justice on the face of a litigant despite the constitutional guarantee of access to justice as enshrined in Article 48.
6. In addition to the foregoing, I must also add that the jurisdictional pre-requisite for a notice of appeal is not merely a technicality of procedure curable by invoking the provisions of Article 159(2) (d) of the *Constitution*, which mandates courts to administer justice without undue regard to technicalities of procedure, and which I have taken to mind.
7. In this regard, the cases of *Jaldesa Tuke Dabelo vs. IEBC & Another* [2015] eKLR; *Raila Odinga and 5 Others vs. IEBC & 3 Others* [2013] eKLR; *Lemanken Arata vs. Harum Meita Mei Lempaka & 2 Others* [2014] eKLR; *Patricia Cherotich Sawe vs. IEBC & 4 Others* [2015] eKLR, among others, are a constant reminder that Article 159(2) (d) is not a panacea for all procedural ills even though “the exercise of the jurisdiction under Article 159 of the Constitution is unfettered especially where procedural technicalities pose an impediment to the administration of justice, save that Article 159(2) (d) of the *Constitution* is not a panacea for all procedural ills”
8. I hasten to observe that it matters not that the overriding objectives set out in sections 3A and 3B of the *Appellate Jurisdiction Act* (Cap.9) confer powers on this Court to dispense justice with greater latitude (see *City Chemist (NBI) Mohamed Kasabuli suing for and on behalf of the Estate of Halima Wamukoya Kasabuli vs. Orient Commercial Bank Limited* Civil Appeal No. Nai 302 of 2008 (UR No. 199 of 2008) (Unreported).
9. Having found that there is no notice of appeal properly on record, I find and hold that I have no jurisdiction to determine the applicant’s Motion or grant any of the orders sought.

DATED AND DELIVERED AT MOMBASA 24TH DAY OF MAY, 2024.

DR. K. I. LAIBUTA

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed



DEPUTY REGISTRAR

