



REPUBLIC OF KENYA



**Fara v Courts & another (Civil Application E021 of 2024)
[2024] KECA 737 (KLR) (21 June 2024) (Ruling)**

Neutral citation: [2024] KECA 737 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CIVIL APPLICATION E021 OF 2024**

KI LAIBUTA, JA

JUNE 21, 2024

BETWEEN

RUWEIDA BWANAHAMAD FARA APPLICANT

AND

SHANZU LAW COURTS 1ST RESPONDENT

ASSETS RECOVERY AGENCY 2ND RESPONDENT

(Being an application for extension of time to serve the Notice of Appeal and file and serve the Record of Appeal out of time from the Ruling and Orders of the High Court of Kenya at Mombasa (Njoki Mwangi, J.) dated 30th June 2022 in HCCC No. 68 of 2020)

RULING

1. Before me is a Notice of Motion dated 8th March 2024 in which the applicant, Ruweida Bwanahamad Fara, seeks extension of time pursuant to rule 4 of the [Court of Appeal Rules](#) to file a notice of appeal, and to file and serve a record of appeal from the Ruling and Orders of the High Court of Kenya at Mombasa (Njoki Mwangi, J.) dated 30th June 2022 in HCCC No 68 of 2020.
2. The applicant's Motion is supported by her annexed affidavit sworn on 8th March 2024 and is made on 10 grounds set out on the face of the Motion in support of which learned counsel, M/s. J. O. Magolo, filed written submissions dated 30th May 2024 citing no judicial authorities.
3. Opposing the applicant's Motion, the 1st respondent filed a replying affidavit of its learned counsel, Mr. Samuel Wambua, sworn on 3rd June 2024 accompanied by his written submissions and case digest dated 3rd June 2024 citing 3 judicial authorities, which I have duly considered along with the matters deponed in his affidavit.
4. Rule 4 of the [Court of Appeal Rules](#) gives the Court unfettered discretion to "... extend the time limited by these Rules, or by any decision of the Court or of a superior Court, for the doing of any act



authorized or required by these Rules, whether before or after the doing of the act ...,” on such terms as it thinks just. However, the Court can only do so in cases where it has the requisite jurisdiction founded on a notice of appeal properly on record.

5. A cursory look at the applicant’s Motion and the affidavits in support and in reply reveals that the applicant’s notice of appeal filed on 5th July 2022 was admittedly served on the wrong party, and not on the 1st respondent; that, notwithstanding want of service, the applicant proceeded to file her record of appeal on 26th May 2023 and subsequently served it on the 1st respondent; that, by an application dated 9th June 2023, the 1st respondent moved the Court to strike out the applicant’s notice and record of appeal; that, by a letter dated 15th February 2024, learned counsel for the applicant conceded to the 1st respondent’s Motion; and that, by an order dated 9th March 2024, this Court allowed the 1st respondents Motion and struck out the applicant’s notice of appeal and record of appeal with no orders as to costs.
6. In consequence of the order of the Court dated 9th March 2024, no notice of appeal has been lodged and served in compliance with the mandatory provisions of rules 77 and 79 of the *Court of Appeal Rules*. This was also confirmed by learned counsel for the applicant in his oral submissions when the Motion came up for hearing before me on the GoTo Meeting virtual platform on 5th June 2024.
7. Addressing itself to the mandatory requirement to file and serve a notice of appeal, the Supreme Court in *University of Eldoret and another v 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.”
8. 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 her intention to appeal. Citing the Supreme Court decision in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission and 7 others* [2014] eKLR, this Court had this to say in *Apungu Arthur Kibira v 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.”
9. 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.
10. 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 MALINDI THIS 21ST DAY OF JUNE, 2024.

DR. K. I. LAIBUTA C.Arb, FCIArb.

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed



DEPUTY REGISTRAR

