



**Barclays Bank of Kenya Limited & another v Kenya Farmers Association Limited
(Civil Application E047 of 2024) [2024] KECA 955 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KECA 955 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION E047 OF 2024**

JW LESSIT, JA

JULY 26, 2024

BETWEEN

BARCLAYS BANK OF KENYA LIMITED 1ST APPLICANT

JOSEPH M GIKONYO T/A GARAM INVESTMENTS 2ND APPLICANT

AND

KENYA FARMERS ASSOCIATION LIMITED RESPONDENT

(Being an application for leave and extension of time to appeal from the Ruling and Order of the Environment and Land Court at Nakuru (Mwangi, J.) delivered on 8th March 2023 in ELC No. 228 of 2015 (Now HCCC No. 6 of 2023).)

RULING

1. Barclays Bank of Kenya Limited and Joseph M. Gikonyo T/A Garam Investments have brought this application dated 1st May 2024 pursuant to, inter alia, Rules 41 (1)(b) (ii), 44 (2), 45(3) and 77(4) of the *Court of Appeal Rules*. They seek:
 - i. That this Court be pleased to grant leave to the applicants to appeal against the ruling of the Environment and Land Court, (ELC) (Mwangi, J.) delivered on 8th March 2023; and,
 - ii. That the time for filing of the record be extended to within 14 days of the grant of leave to appeal.
2. I note that the applicant has fled an omnibus application seeking two orders. Order one seeks leave to appeal against the ruling of the Environment and Land Court, which can only be heard by a full bench of this Court. The second order sought of extension of time to file record of appeal is befitting a single judge of the Court.



3. Rule 53 of the *Court of Appeal Rules* provides:

“(1) Every application, other than an application included in sub-rule (2), shall be heard by a single judge:

Provided that any such application may be adjourned by the judge for determination by the Court.

2. This rule shall not apply to -

- a. an application for leave to appeal;
- b. an application for a stay of execution, injunction, or stay of further proceedings;
- c. an application to strike out a notice of appeal or an appeal; or
- d. an application made as ancillary to an application under paragraph (a) or (b) or made informally in the course of a hearing.”

4. In the Supreme Court case of *Aviation & Allied Workers Union Kenya v Kenya Airways Limited & 3 others* [2015] eKLR the Court considered an omnibus application and had the following to say:

“[20] We have noted that the applicant has cited Sections of the *Supreme Court Act* and Rules which are applicable when one seeks leave, and grant of certification. In *Hermanus Phillipus Steyn v Giovanni Gneccchi Ruscone*, Sup. Ct. Application 2 of 2012, this Court stated [paragraph 23]:

“... It is trite law that a Court of law has to be moved under the correct provisions of the law.”

A party who moves the Court, has to cite the specific provision(s) of the law that clothes the Court with the jurisdiction invoked. It is improper for a party in its pleadings, to make ‘omnibus’ applications, with ambiguous prayers, hoping that the Court will grant at least some.”

5. The application before me is not ambiguous but it is omnibus. While I would have had no problem dealing with the prayer for extension of time under Rule 4 for which I have jurisdiction to do, it is premature to deal with it at this stage. The reason being there is no appeal before the Court, as the applicant did not have an automatic right of appeal to this Court. In my view, he has to obtain that leave first and then seek extension of time. Instead of striking out the application on the technicality highlighted above, and in order to save the applicant time and grant him access to justice without delay or saddling him with technicalities contrary to the spirit prescribed under Article 159(2) of the *Constitution*, I will save it for consideration by a full bench.

6. In the result, I direct that the application be placed before a full bench of this Court for determination of the prayer for leave to appeal the decision of the superior court.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF JULY, 2024.

J. LESIIT

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

