



**Kenya Power & Lighting Company v Mukala (Civil Appeal (Application)
E203 of 2022) [2023] KECA 113 (KLR) (3 February 2023) (Ruling)**

Neutral citation: [2023] KECA 113 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E203 OF 2022
KI LAIBUTA, JA
FEBRUARY 3, 2023**

BETWEEN

KENYA POWER & LIGHTING COMPANY APPELLANT

AND

ALEXANDER KASINA MUKALA RESPONDENT

(Being an application for extension of time to file a Cross Appeal out of time, from the Judgment and Decree of the Employment and Labour Relations Court of Kenya at Nairobi (Hellen Wasilwa, J.) delivered on 9th October 2018 in E.L.R.C Cause No. 301 of 2012)

RULING

- 1 By a notice of motion dated November 7, 2022 and anchored on a whopping 28 grounds set out on the face of the motion, the applicant, Alexander Kasina Mukala, seeks extension of time to file a cross appeal, and prays that the draft memorandum of appeal annexed to his supporting affidavit sworn on November 7, 2022 be deemed as duly filed.
- 2 In support of the applicant's motion, his former counsel, M/s KK Katisya and Company, filed written submissions and a list of authorities both dated November 15, 2022.
- 3 The applicant's motion is opposed vide the undated replying affidavit of Kwame Shago, learned counsel for the respondent. Learned counsel also filed written submissions dated December 2, 2022.
- 4 Rule 95(1) and (2) of the [Court of Appeal Rules](#) provides:
 95.
 - (1) A respondent who desires to contend at the hearing of the appeal that the decision of the superior court or any part thereof should be varied or reversed, in any event or in the event of the appeal being allowed in whole or in part, shall give notice to that



effect, specifying the grounds of the contention and nature of the order which he or she proposes to ask the court to make, or to make in that event, as the case may be.

- (2) A notice under sub-rule (1) shall state the names and addresses of the persons intended to be served with copies of the notice and lodged in four copies in the appropriate registry not more than thirty days after service on the respondent of the memorandum of appeal and record of appeal, or not less than thirty days before the hearing of the appeal, whichever is the later.”

5 It is noteworthy that, apart from seeking extension of time to lodge a cross-appeal four years down the line, the applicant has neither given notice of his intended cross-appeal in compliance with rule 95(1) nor lodged such notice in the appropriate registry as required under sub-rule (2). I need not overemphasise that a notice of appeal or of cross-appeal is jurisdictional, and without which the applicant’s motion is dead on arrival. The same fails and is hereby dismissed with costs to the respondent.

DATED AND DELIVERED AT NAIROBI THIS 3RD DAY OF FEBRUARY, 2023.

DR KI LAIBUTA

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

