



**Amollo & 6 others v Chege & another (Civil Application
E070 of 2023) [2023] KECA 543 (KLR) (12 May 2023) (Ruling)**

Neutral citation: [2023] KECA 543 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E070 OF 2023**

KI LAIBUTA, JA

MAY 12, 2023

BETWEEN

JORAM AMOLLO 1ST APPLICANT
ANTONY CHEGE MWANGI 2ND APPLICANT
JOSEPH NGIGI MBUGUA 3RD APPLICANT
JANE NJOKI MWANGI 4TH APPLICANT
JANE MUTHINDA KIMEU 5TH APPLICANT
SIMON WAITITU NDUNGÚ 6TH APPLICANT
BERNARD KIMUNYA 7TH APPLICANT

AND

NGARUIYA CHEGE 1ST RESPONDENT
ATHI WATER SERVICES BOARD 2ND RESPONDENT

(Being an application for extension of time to file and serve the Notice of Appeal, Memorandum of Appeal and Record of Appeal out of time from the Judgment and Decree of the Environment and Land Court of Kenya at Nairobi (O A Angote, J) delivered on January 19, 2023 in E L C Case No 241 of 2014)

RULING

1. By an undated Notice of Motion made under rules 4 of the [Court of Appeal Rules](#) and supported by the annexed affidavit of Bernard Kimunya (the 7th applicant) sworn on March 1, 2023, the Applicants seek extension of time to file and serve their notice of appeal, memorandum of appeal and record of appeal from the judgment of O A Angote, J in Nairobi ELC No 241 of 2014 out of time; and orders



that the costs of the application be provided for. The supporting affidavit essentially depones to the factual background and substantiates the grounds on which the Motion is made.

2. The applicants' Motion is anchored on the grounds, *inter alia*: that the impugned judgment was delivered on January 19, 2023, though dated December 19, 2022; that it took time to have the typographical error on the date of judgment rectified on February 20, 2023; and that they filed the Motion to which the notice of appeal is annexed on March 1, 2023.
3. Rule 77(1) of the [Court of Appeal Rules](#) mandates a person who desires to appeal to the Court to give notice in writing, which notice shall be lodged in two copies with the Registrar of the superior court within fourteen (14) days from the date of the decision against which the appeal is preferred.
4. Apart from the undated Motion, the affidavit in support, the draft notice of appeal and the memorandum of appeal annexed to the supporting affidavit, I find nothing on record to demonstrate that the requisite notice of the intended appeal has been lodged with the superior court in compliance with rule 77(1) of this Court's Rules. Neither is there evidence that the Motion has been served on the respondents as directed by the Registrar vide the hearing notice served upon the applicants on April 26, 2023.
5. It is noteworthy that the applicants have not lodged their notice of appeal as mandated by rule 77(1) and (2) of the Court of Appeal Rules so as to invoke this Court's jurisdiction. In the circumstances, I have no jurisdiction to hear and determine the application before me. In [Phoenix of EA Assurance Company Limited vs S M Thiga T/A Newspaper Service](#) [2019] eKLR, this Court had this to say on the matter:

“A suit filed devoid of jurisdiction is dead on arrival and cannot be remedied. Without jurisdiction, the Court cannot confer jurisdiction to itself.”
6. In another *locus classicus* in this subject, this Court pronounced itself in [Owners of the Motor Vessel "Lillian S" vs Caltex Oil \(Kenya\) Ltd](#) [1989] eKLR thus:

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given.”
7. In the same vein, the Supreme Court observed in [Nicholas Kiptoo Arap Korir Salat vs Independent Electoral and Boundaries Commission & 7 others](#) [2014] 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.”
8. In view of the foregoing, I reach the inescapable conclusion that I have no jurisdiction to hear and determine the applicant's Motion. Indeed, I am mandated to down my tools and say no more, save to voice the all-familiar reminder that the quickest sinking sands of a case lie in its foundation. In effect, the absence of the pre-requisite notice of appeal to this Court deprives an intended appeal of the very foundation on which all proceedings would be anchored. The applicants' undated Notice of Motion is incompetent and is hereby struck out.

DATED AND DELIVERED AT NAIROBI THIS 12TH DAY OF MAY, 2023.



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

