



**Nextgen Office Suites Limited v Kimani & 7 others (Civil Application  
E162 of 2023) [2023] KECA 664 (KLR) (9 June 2023) (Ruling)**

Neutral citation: [2023] KECA 664 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E162 OF 2023**

**KI LAIBUTA, JA**

**JUNE 9, 2023**

**BETWEEN**

**NEXTGEN OFFICE SUITES LIMITED ..... APPLICANT**

**AND**

**GEORGE KANYI ..... 1<sup>ST</sup> RESPONDENT**

**STANLEY KIMANI ..... 2<sup>ND</sup> RESPONDENT**

**SANJAY SHIVJI ..... 3<sup>RD</sup> RESPONDENT**

**ALEXANDAR MUEMA ..... 4<sup>TH</sup> RESPONDENT**

**THE CHIEF LAND REGISTRAR ..... 5<sup>TH</sup> RESPONDENT**

**PRINCIPAL SECRETARY, MINISTRY OF LANDS & PHYSICAL  
PLANNING ..... 6<sup>TH</sup> RESPONDENT**

**MINISTRY OF LANDS & PHYSICAL PLANNING ..... 7<sup>TH</sup> RESPONDENT**

**THE COUNTY GOVERNMENT, NAIROBI CITY COUNCIL .... 8<sup>TH</sup>  
RESPONDENT**

*(Being an application for extension of time to seek leave to appeal out of time  
against the Ruling and Orders of the Environment and Land Court of Kenya at  
Nairobi (O. A. Angote, J.) dated 16th March 2023 in E.L.C No. E063 OF 2022)*



## RULING

1. Before me is a Notice of Motion dated April 24, 2023 made under rules 4, 41, 43, 44 and 77(2) of the *Court of Appeal Rules* in which the Applicant, Nextgen Office Suites Limited, prays for:

extension of time to appeal out of time against the ruling and order of OA Angote, J delivered on March 16, 2023 in ELC No E063 of 2022; orders that the Notice of Appeal and memorandum of appeal be deemed as duly filed upon payment of the requisite fees; stay of execution of the impugned ruling and orders pending appeal; and that costs of the application be costs in the appeal.
2. The applicant's Motion is supported by the annexed affidavit of Ramesh Kumar Kantilal Amlani, a director of the applicant company, sworn on April 24, 2023 essentially deposing to the grounds on which the application is made, namely: that the impugned ruling and orders were delivered on March 16, 2023; that the applicant was aggrieved thereby and wishes to move this Court on appeal; that the time allowed to lodge an appeal and file a notice of appeal lapsed on March 31, 2023; that the delay in filing the notice of appeal was occasioned by the applicant's change of advocates and the appurtenant delay in handing over the applicant's records and secure instructions to lodge the appeal; that the applicant had initially sought review of the impugned ruling and orders, but withdrew its application and preferred an appeal; that the delay in lodging the appeal is sufficiently explained, and is not inordinate; that the application is brought in good faith and will not prejudice the respondent if the orders sought are granted, as they continue to enjoy quiet possession of the units in issue situate on the suit property; and that the applicant has an arguable appeal with a good chance of success. It prays that the application be allowed.
3. The supporting affidavit merely restates the grounds aforesaid and depones further to the grounds advanced in support of the application for stay of execution pending appeal, which do not fall within my remit to consider.
4. In response to the application, the 1<sup>st</sup> to 4<sup>th</sup> respondents have filed a replying affidavit of George Kanyi, the 1<sup>st</sup> respondent, sworn on April 28, 2023 on his own behalf and on behalf of the 2<sup>nd</sup> to 4<sup>th</sup> respondents. However, there is no response on record for the 5<sup>th</sup> to 8<sup>th</sup> respondents. The 1<sup>st</sup> to 4<sup>th</sup> respondents contend that the applicant does not deserve the orders sought having elected to file an application for review instead of an appeal, and having exhausted time and thereafter withdrew its applications for review and stay orders on April 18, 2023. The rest of the grounds are advanced in support of the applicant's Motion for stay of execution, which falls outside my jurisdiction to determine.
5. It is noteworthy that the impugned ruling and orders were delivered on March 16, 2023; that the applicant's Motion seeking extension of time to file the intended appeal is supported by the affidavit of Ramesh Kumar Kantilal Amlani to which there is annexed a draft notice of appeal; and that 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*, 2022.



6. 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.”
7. 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.”
8. 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.
9. 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. 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 ....”
10. I also hasten to add 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).
11. 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. Accordingly, I find that the applicant’s Motion dated March 13, 2023 seeking extension of time in terms of prayer No 4 is incompetent and is hereby struck out.

**DATED AND DELIVERED AT NAIROBI THIS 9TH DAY OF JUNE, 2023.**

**DR. K. I. LAIBUTA**

.....

**JUDGE OF APPEAL**

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

*Signed*



**DEPUTY REGISTRAR**

