



**Kamau v Barclays Bank of Kenya Limited (Civil Application  
E401 of 2022) [2023] KECA 1484 (KLR) (8 December 2023) (Ruling)**

Neutral citation: [2023] KECA 1484 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E401 OF 2022  
P NYAMWEYA, JA  
DECEMBER 8, 2023**

**BETWEEN**

**JAMES MWANGI KAMAU ..... APPLICANT**

**AND**

**BARCLAYS BANK OF KENYA LIMITED ..... RESPONDENT**

*(An application for leave to appeal against the Ruling of the Employment and Labour Relations Court (S.C. Rutto J.) delivered on 16th September 2022 in ELRCC No. 35 of 017)*

**RULING**

1. The Applicant herein is stated to be James Mwangi Kamau, who has filed a Notice of Motion application dated 2<sup>nd</sup> November 2022 seeking orders that this Court in exercise of its unfettered discretion be pleased to grant leave to the Applicant to file a Notice of Appeal against the ruling of the Employment and Labour Relations Court (S C Rutto J) delivered on 16<sup>th</sup> September 2022 in ELRC/535/2017. The application is supported by an affidavit sworn on 29<sup>th</sup> July 2022 by George Kogi Wangai, who is described as the Applicant's advocate with the conduct of this matter.
2. The Applicant's advocate states that the Applicant has no express right of appeal except with leave of this court, and is aggrieved by, and intends to appeal the Ruling dated 16<sup>th</sup> September 2022 on the grounds that the learned Judge erred in finding their application dated 8<sup>th</sup> April 2022 to be *res judicata*, and in not exercising her discretion to reinstate the Applicant's suit pursuant to Order 24 Rule 7 of the *Civil Procedure Rules*. The Applicant's case in this respect is that the right to appeal is a constitutional right and the Applicant is desirous of exercising that right and seeks the leave of this Court to file a Notice of Appeal, out of the prescribed period against the ruling delivered on 16<sup>th</sup> September 2022. Further, that the Applicant failed to file the notice of appeal within the prescribed period due to a human error, as a result of the inadvertence by a clerk in the firm of the Applicant's counsel who failed to file the Notice of Appeal within the prescribed period of time.



3. The Applicant's advocate in his submissions dated 31st October 2023 cited the decisions in *Andrew Kiplagat Chemaringo vs Paul Kipkorir Kibet* [2018] eKLR and *Athuman Nusura Juma vs Afwa Mohammed Ramathan* CA No 227 of 2015 on the principles that have shaped the exercise of this Court's discretion under Rule 4 of the *Court of Appeal Rules*, and also placed reliance on the decisions in the cases of *Martha Wangari Karua vs IEBC & 3 Others* [2018] eKLR and *Philip Chemwolo & Another vs Augustine Kubede* [1986] eKLR for the position that no party should be driven away from the seat of justice without being given an opportunity to have his or her case heard on merit irrespective of mistakes that may have been made along the way by its advocates and/or because there had been technicalities.
4. Barclays Bank of Kenya Ltd, the Respondent herein, opposed the application in by way of submissions dated 1<sup>st</sup> November 2023 filed by its advocates on record, Mohammed Muigai LLP. The said advocates commenced by pointing out that the instant application seeks for extension of time yet it does not make a prayer of that nature, the applicant is deceased and the supporting affidavit to the application has been sworn by an advocate. On the substantive aspects of the application, the advocates submitted that the delay in filing the application was inordinate and no plausible and reasonable explanation has been offered by the Applicant. Further, that the Respondent shall suffer prejudice if the application is allowed and it shall be in pursuance of an appeal that does not raise any triable issue. Reliance was in this respect placed on the decision and reasoning in the case of *Jimcab Services Limited vs Bartholomew Bernard Osodo & Another* [2018] eKLR.
5. A preliminary issue has been raised about the competence of this application. It is not disputed that the Applicant herein is deceased, and it is notable in this respect that the application is stated to be supported by an affidavit by "George Kogi Wangai Counsel for Grcae Wairimu Kamau, the Administrator of the Estate of James Mwangi Kamau". The application does not state that it is being brought by the Administrator of James Mwangi Kamau, nor is any such legal authority to bring the application annexed. There is therefore no competent Applicant in this application as presently filed.
6. The Notice of Motion application dated 2<sup>nd</sup> November 2022 is therefore struck out for being incompetently filed with costs to the Respondent, which costs shall be personally borne by the Applicant's advocate on record.
7. Orders accordingly.

**DATED AND DELIVERED AT NAIROBI THIS 8<sup>TH</sup> DAY OF DECEMBER 2023.**

**P. NYAMWEYA**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

