



REPUBLIC OF KENYA



KENYA LAW
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**Juneja v Juneia (Civil Appeal (Application) 35 of 2018)
[2022] KECA 1045 (KLR) (23 September 2022) (Ruling)**

Neutral citation: [2022] KECA 1045 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPEAL (APPLICATION) 35 OF 2018
PO KIAGE, M NGUGI & F TUIYOTT, JJA
SEPTEMBER 23, 2022**

BETWEEN

AMIN AHMED JUNEJA APPLICANT

AND

ROSHAN JQBAL JUNEIA RESPONDENT

*(Being an appeal against the judgment of the High Court of Kenya at
Kisumu (S. M. Kibunja, J) dated 17th January 2021 in ELC. No. 46 OF 2013)*

RULING

1. The application dated 1st November 2021 prays that we expunge from the record two notices of cross-appeal both dated 10th October 2021 and filed on 22nd October 2021. The application is said to be brought pursuant to Section 3A of the *Appellate Jurisdiction Act* and Rules 42 and 75 (2) of the *Court of Appeal Rules*, 2010.
2. At the outset we must point out that there is only one notice of cross-appeal. Annexure AAJ2 to the affidavit of Amin Ahmed Juneja in support of the application is not a notice and, as explained by the respondent's Counsel, is simply the cover page to the only notice on record.
3. The judgment which is the subject of the appeal and cross appeal was delivered on 17th January, 2021. It is the contention of the applicant that the notice of cross-appeal breached the timeline of fourteen (14) days set by Rule 75 of the 2010 Rules (now Rule 77 of the 2022 Rules).
4. It is common ground that this appeal has not been set down for hearing and the respondent's simple response to the application is that by dint of the provisions of Rule 93 (now Rule 95), the notice of cross-appeal was filed timeously.
5. Rule 93 then read: -



93. Notice of cross-appeal

- (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, either 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 his contention and the nature of the order which he proposes to ask the Court to make, or to make in that event, as the case may be.
- (2) A notice given by a respondent under this rule shall state the names and addresses of any persons intended to be served with copies of the notice and shall be lodged in quadruplicate in the appropriate registry not more than thirty days after service on the respondent of the memorandum of appeal and the record of appeal or not less than thirty days before the hearing of the appeal, whichever is the later.
- (3) A notice of cross-appeal shall be substantially in the Form G in the First Schedule and shall be signed by or on behalf of the respondent.

6. The applicant retorts that Rule 75 which governs the giving of notice of appeal applies in equal measure to cross-appeals. We are asked to distinguish the giving of notice of cross-appeal which ought to be within fourteen (14) days from the date of the decision sought to be appealed against and the lodgment of a cross-appeal which is governed by Rule 93 (2). It is submitted that to interpret Rule 93 (2) in any other way yields to an unequal treatment of parties to an appeal as the respondent has all the time to drag the process of giving notice to the appellant. This, it is argued, is unconstitutional.

7. It is clear to us that the provisions of Rule 75 do not apply to cross-appeals. This can be construed from the express words of Rule 93 which lays down the steps to be taken by a respondent who desires to cross-appeal. The respondent must give a notice of the desire to contend that the decision appealed against or any part thereof should be varied or reserved, either in any event or in the event of the appeal being allowed in whole or in part in accordance with Sub Rule 2. The notice must specify the grounds of contention and the order proposed to be made by the Court. That notice is what is referred to as a notice of cross-appeal. Rule 93 is complete for this purpose and makes no reference to Rule 75. There is no requirement for the filing of any other notice. That being so, the filing of the notice of cross-appeal on 22nd October 2021 is within time as this appeal is yet to be set down for hearing.

8. We further note that we do not have, before us, a constitutional challenge to Rule 93(1) and we decline to express ourselves way or the other on that question.

9. The notice of motion dated 1st November, 2021 is without merit and is hereby dismissed with costs.

DATED AND DELIVERED AT KISUMU THIS 23RD DAY OF SEPTEMBER, 2022.

P. O. KIAGE

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JUDGE OF APPEAL

MUMBI NGUGI

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JUDGE OF APPEAL

F. TUIYOTT

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JUDGE OF APPEAL

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

SIGNED

DEPUTY REGISTRAR

