



**Kamanja v Equity Bank Limited & another (Civil Appeal E258 of 2022)  
[2022] KECA 1014 (KLR) (23 September 2022) (Ruling)**

Neutral citation: [2022] KECA 1014 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL E258 OF 2022  
PM GACHOKA, JA  
SEPTEMBER 23, 2022**

**BETWEEN**

**ROBERT MAINA KAMANJA ..... APPLICANT**

**AND**

**EQUITY BANK LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**KEYSIAN AUCTIONEERS ..... 2<sup>ND</sup> RESPONDENT**

*((Being an application for leave to file and serve Notice of Appeal and Record of Appeal out of time against the Ruling of the High Court of Kenya at Kajiado (S. N. Mutuku, J.) delivered on 24th May 2022 in High Court Civil Suit No. E016 of 2021))*

**RULING**

1. The Applicant has filed a notice of motion under Section 34 of the [Civil Procedure Act](#) and Rules 4 and 5 (2) (b) of the [Court of Appeal Rules](#) seeking the following orders;
  1. That this Honourable Court grant leave to file and serve the Notice of Appeal and Record of Appeal out of time.
  2. That the Honourable Court be pleased to grant an order of temporary injunction do issue restraining the respondents whether by themselves, their agents and/or assigns the respondents whether by themselves, their agents and/or assigns from disposing off, auctioning off, selling or otherwise interfering with the property known as NGONG/NGONG/91927 pending the inter-parties hearing and determination of this application.
  3. That the Honourable Court be pleased to grant an order of temporary injunction do issue restraining the respondents whether by themselves, their agents and/or assigns from disposing off, auctioning off, selling or otherwise interfering with the property known as NGONG/NGONG/91927 pending the inter-parties hearing and determination of the intended appeal.



2. The application is supported by the affidavit sworn on July 21, 2022 by Robert Maina kamanja.
3. The applicant has not filed written submissions. I also note that the respondents have not filed any affidavits or submissions. I further note that on September 7, 2022 the court served the parties with the hearing notice. The parties were directed that this application will be heard by way of written submissions. The court has perused the records and note that the parties were served through their respective emails as follows;
  - (i) Applicant khaminwa05@gmail.com
  - (ii) 1<sup>st</sup> Respondent litigationunit@equitybank.co.ke
  - (iii) 2<sup>nd</sup> respondent keysianauct@gmail.com
4. The Court is satisfied that the parties were duly served and will rely on the documents that have been filed.
5. At the outset, the Court notes that prayers No. 2 and 3 of the notice of motion are prematurely sought and are not capable of being granted. It is trite law that an application under Rule 5 (2) (b) can only be granted if a notice of appeal or record of appeal has been filed in accordance with the rules. In this application, it is clear that the notice of appeal has not been filed and the applicant is seeking leave to file the notice of appeal out of time. Further, an application under rule 5(2)(b) is not a single judge application and therefore the applicant cannot file an omnibus application.
6. In view of the foregoing, prayers 2 and 3 of this Notice of Motion are hereby dismissed.
7. As regards the prayer for leave to file a notice of appeal out of time, the applicant states as follows in his supporting affidavit;
  - i. That the ruling dated 24<sup>th</sup> May 2022 was delivered on notice but they did not receive any communication or notification of the ruling date from the court.
  - ii. That though the time for filing of the notice of appeal and record of appeal has lapsed, a delay of 3 weeks is not inordinate.
8. I have carefully considered the application and the supporting affidavit.
9. This court notes that the application was filed two months after the delivery of the ruling of the High Court. Though the Respondents were served, they have not filed any affidavit or grounds opposing the allegation that the notice of delivery of the ruling was not sent to the Applicant.
10. In view of the foregoing and taking into account all the factors indicated above and being guided by the principles governing exercise of my discretion under Rule 4 of this Court Rules, as set out in *Leo Sila Mutiso v Rose Hellen Wanjohi Mwangi* Civil Appeal No 251 of 1997, I allow this application in terms of pray 1 only.
11. I order and direct that the applicant shall file and serve the respondents with the notice of appeal within the next 14 days and the record of appeal within 30 days of the filing of the notice of appeal.

Orders accordingly

**DATED AT NAIROBI THIS 23<sup>RD</sup> DAY OF SEPTEMBER, 2022.**

**M. GACHOKA, CIArb, FCIArb**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

