



**Mwiti v Kenya Power and Lighting Company & another (Civil Application
151 of 2018) [2022] KECA 1431 (KLR) (14 October 2022) (Ruling)**

Neutral citation: [2022] KECA 1431 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION 151 OF 2018
W KARANJA, JA
OCTOBER 14, 2022**

BETWEEN

ELPHAS MWITI APPLICANT

AND

KENYA POWER AND LIGHTING COMPANY 1ST RESPONDENT

HON ATTORNEY GENERAL 2ND RESPONDENT

*(Application seeking extension of time within which to file reference from
the decision of the Court of Appeal at Nyeri (J, Mohamed. J.A) dated
7th August 2020 in Nyeri COA Civil Application No. 151 of 2018)*

RULING

1. On August 7, 2020 this court, (J. Mohamed, JA) sitting as single judge dismissed the applicant's motion for extension of time to file an appeal out of time against the judgment of the High Court (Ngaah Jairus, J) delivered on April 20, 2016. Following the said dismissal, the only recourse available to the applicant pursuant to rule 55 (1) b of the [Court of Appeal Rules](#) was to either orally request the court to refer the matter for reference before a full bench, or write to the registrar of the court within 7 days and request for the said reference. The applicant did not do so. It would appear that he filed this application which I am sad to say has serious challenges. To start with I cannot tell the date the application was filed. Figure this. The application is dated 21st Monday 2020. The court stamp from the registry on the other hand reads 30th September 20. Putting the two dates together, I can safely conclude that the application could have been filed on September 21, 2020.
2. In the application, the applicant seeks leave to appeal out of time; he asks for a review of the ruling of Judge J. Mohammed dismissing his application; and that the court "constructs" a 3 judge bench to hear his application.



This application is a non- starter for the following reasons. Firstly, this is not a reference to full court. I have explained the process to be followed when one is dissatisfied with a decision of single judge. He did not request for a reference as provided under rule 55 (1) b but instead filed this application which as it stands is incompetent. I have no jurisdiction to review the decision of the single judge; nor can I “construct” a bench to hear the applicant’s application.

3. Consequently, I find this application irredeemably bad in law and devoid of merit and dismiss it with no order as to costs.

DATED AND DELIVERED AT NYERI THIS 14TH DAY OF OCTOBER 2022.

W. KARANJA

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR

