



**Kithinji v Director of Public Prosecutions & another (Civil Appeal (Application)
E334 of 2022) [2022] KECA 1100 (KLR) (7 October 2022) (Ruling)**

Neutral citation: [2022] KECA 1100 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E334 OF 2022
KI LAIBUTA, JA
OCTOBER 7, 2022**

BETWEEN

JAMES NTHUKU KITHINJI APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS 1ST RESPONDENT

CHIEF MAGISTRATES COURT, KIBERA LAW COURTS 2ND RESPONDENT

*(Being an application for extension of time to serve the Memorandum
and Record of Appeal on the 1st Respondent out of time and leave not
to serve the 2nd Respondent In Nairobi Civil Appeal No. E344 of 2022)*

RULING

1. Before me is a Notice of Motion dated August 5, 2022 made under Rules 4, 17(1), 42, 79 and 90 of the [Court of Appeal Rules](#), 2010 in which the Applicant (James Nthuku Kithinji) seeks extension of time pursuant to Rules 4 and 92 of the Court of Appeal Rules, 2022 to serve his Memorandum and Record of Appeal upon the 1st respondent out of time. He also seeks leave not to serve the 2nd respondent.
2. The applicant's Motion is supported by his annexed affidavit sworn on 5th August 2022 and is made on the grounds, inter alia: that the applicant filed and served his notice of appeal to the respondents within the prescribed period; and that he thereafter filed his Memorandum and record of appeal within the stipulated period, but did not serve the same within 7 days in compliance with Rule 92(1) of this Court's Rules in view of the fact that none of the respondents had complied with the requirements of Rule 81(1), which requires every respondent on whom a notice of appeal is served to lodge, within 14 days after service, and serve on the intended appellant a notice of a full and sufficient address for service.
3. Whereas none of the respondents has complied with the requirements of Rule 81(1) the applicant is nonetheless seeking extension of time to serve the 1st respondent, as well as leave not to serve the 2nd.



He has not explained why he should not serve both. Neither has he claimed that the 2nd respondent's address for service is not known to him.

4. Having carefully considered the applicant's Motion, the affidavit in support thereof, the Rules of this Court, and the applicant's written submissions and list of authorities dated 19th September 2022, I hereby order and direct the applicant to serve the Memorandum and record of appeal on the 1st and 2nd respondents within 7 days. The costs of this application shall be borne by the applicant in any event. Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 7TH DAY OF OCTOBER, 2022

DR. K. I. LAIBUTA

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

