



REPUBLIC OF KENYA



**KENYA LAW**  
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**Angaluki v Waruhiu Kamau Gitoka t/a Sakam Engineering Contractor (Civil Appeal (Application) E433 of 2022) [2022] KECA 1228 (KLR) (4 November 2022) (Ruling)**

Neutral citation: [2022] KECA 1228 (KLR)

**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL AT NAIROBI**  
**CIVIL APPEAL (APPLICATION) E433 OF 2022**  
**KI LAIBUTA, JA**  
**NOVEMBER 4, 2022**

**BETWEEN**

**SILVANOS CHADIMBA ANGALUKI ..... APPLICANT**

**AND**

**WARUHIU KAMAU GITOKA T/A SAKAM ENGINEERING  
CONTRACTOR ..... RESPONDENT**

*(Being an application for extension of time to file an Appeal out of time from the Judgment and Decree of the Employment and Labour Relations Court of Kenya at Nairobi (Stella C. Rutto, J.) delivered on 28th April 2022 in ELRC Cause No. 1670 of 2017)*

**RULING**

1. The applicant has filed a Notice of Motion dated July 7, 2022 under Rule 4 of the [Court of Appeal Rules](#). He seeks: extension of time pursuant to Rule 4 to appeal out of time from the judgment of the ELRC (Stella C. Rutto, J.) delivered on April 28, 2022 in ELRC Cause No. 1670 of 2016; leave to file the record of appeal within 60 days of leave being granted; and orders that the costs of the application do abide the outcome of the intended appeal.
2. The applicant's Motion is made on the grounds set out on the face thereof and is supported by the affidavit of Wangira Okoba A., learned counsel for the applicant, sworn on July 7, 2022. It is noteworthy that there is nothing on record to suggest that the applicant has filed any notice expressing his intention to lodge an appeal as required by Rule 77 of this [Court's Rules](#).
3. Addressing itself to the mandatory requirement to file and serve a notice of appeal, the Supreme Court in [University of Eldoret and another vs. Hosea Sitienci and three others](#) [2020] eKLR observed at para 36:

“The filing of a notice of appeal is not premised on any occurrence or condition to be fulfilled by the appellant. The filing of a notice of appeal signifies the intention to appeal.”



4. On the authority of the University of Eldoret and Sitienei case, it is true to say that, in the absence of a notice of appeal properly on record, the applicant herein is yet to express his intention to appeal. Citing the Supreme Court decision in Nicholas Kiptoo Arap Korir Salat vs. Independent Electoral and Boundaries Commission and 7 others [2014] eKLR, this Court had this to say in Apungu Arthur Kibira vs. Independent Electoral and Boundaries Commission and 2 others [2018] eKLR:

“A notice of appeal is a primary document to be filed outright whether or not the subject matter under appeal is that which requires leave or not. It is a jurisdictional pre-requisite.”

5. I also hasten to point out that the applicant’s application for leave to file a record of the intended appeal does not of itself excuse him from the requirement to express its intention to appeal by giving the requisite notice under Rule 77.

6. In so far as a Notice of appeal is a jurisdictional pre-requisite, nothing flows from a non-existent notice to invoke this Court’s jurisdiction to grant the orders sought pursuant to Rule 4 or any other Rule. In effect, its hands are tied, so to speak. I so hold cognisant of the general principle that it is only in exceptional circumstances that this court would raise its hand to slam shut the door to justice on the face of a litigant despite the constitutional guarantee of access to justice as enshrined in Article 48.

7. In addition to the foregoing, I must also add that the jurisdictional pre-requisite for a notice of appeal is not merely a technicality of procedure curable by invoking the provisions of Article 159(2) (d) of the Constitution, which mandates courts to administer justice without undue regard to technicalities of procedure, and which I have taken to mind. In this regard, the cases of Jaldesa Tuke Dabelo vs. IEBC & Another [2015] eKLR; Raila Odinga and 5 Others vs. IEBC & 3 Others [2013] eKLR; Lemanken Arata vs. Harum Meita Mei Lempaka & 2 others [2014] eKLR; Patricia Cherotich Sawe vs. IEBC & 4 Others [2015] eKLR, among others, are a constant reminder that Article 159(2) (d) is not a panacea for all procedural ills even though “the exercise of the jurisdiction under Article 159 of the Constitution is unfettered especially where procedural technicalities pose an impediment to the administration of justice, save that Article 159(2) (d) of the Constitution is not a panacea for all procedural ills ....” It matters not that the overriding objectives set out in sections 3A and 3B of the Appellate Jurisdiction Act (Cap. 9) confer powers on this Court to dispense justice with greater latitude (see City Chemist (NBI) Mohamed Kasabuli suing for and on behalf of the Estate of Halima Wamukoya Kasabuli vs. Orient Commercial Bank Limited Civil Appeal No. Nai 302 of 2008 (UR No. 199 of 2008) (Unreported).

8. Having found that there is no notice of appeal on record, I find and hold that I have no jurisdiction to determine the applicant’s Motion, or grant any of the orders sought.

**DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF NOVEMBER, 2022**

**DR. K. I. LAIBUTA**

.....

**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

