



REPUBLIC OF KENYA



KENYA LAW
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**Kimani v Kamau (Civil Application E264 of 2020)
[2022] KECA 1243 (KLR) (4 November 2022) (Ruling)**

Neutral citation: [2022] KECA 1243 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E264 OF 2020
F SICHALE, JA
NOVEMBER 4, 2022**

BETWEEN

ALPHONCE KAMAU KIMANI APPLICANT

AND

JOHN NDIRANGU KAMAU RESPONDENT

(An Application for Stay pending the hearing and determination of the intended Appeal against the ruling of the High Court of Kenya at Nairobi (Okong'o,J) dated the 31st July, 2020)

RULING

1. Alphonce Kamau Kimani(the applicant herein), had vide a motion dated August 27, 2020, predicated upon Rule 5 (2) (b), 31 and 42 of the *Court of Appeal Rules*, 2010 sought inter alia an order of Stay of Execution of the ruling/order delivered on July 31, 2020 in ELC No. 1068 of 2007 by Okong'o J pending the determination of the intended appeal.
2. The applicant further sought leave to file an appeal of the judgment dated November 30, 2003, out of time.
3. On November 5, 2021, this court, Kantai, Nyamweya and Lesiit JJ.A, granted the prayers for stay of execution having come to the conclusion that the applicant had satisfied the twin principles required in an application under Rule 5 (2) (b) of this court.
4. Regarding the payer for leave to file the appeal out of time, the court inter alia noted that the same is made pursuant to Rule 4 of this court before a Single Judge and subsequently ordered the Deputy Registrar of this Court to place the pending application for leave to appeal out of time before a Single Judge for determination. It is this ruling that precipitated the application that is now before me seeking extension of time.



5. The applicant herein is seeking to be granted leave to file an appeal of the judgment dated November 30, 2003 out of time. It is not clear whether the stated date of the judgment i.e. November 30, 2003 is a typographical error or otherwise since the annexed Notice of Appeal dated July 16, 2019 refers to a judgment delivered by Okong’o J on June 26, 2019 and it would be dangerous for this Court to speculate or assume the date of delivery of the impugned judgment that is sought to be appealed against. Again the stay of execution that had been sought was in respect to a ruling delivered on July 31, 2020 by Okong’o J.
6. Additionally, at paragraph 5 in support of the motion, it has been deposed thus; inter alia thus;

“That we being aggrieved by the Ruling; we filed a Notice of Appeal against the ruling and judgment and requested for certified copies of the proceedings and order to enable us prepare and file record of appeal.”
7. This Court has perused the Notice of Appeal referred to in paragraph 5 of the supporting affidavit. The same inter alia reads as follows;

“Take Notice that the defendant herein Alphonse Kamau Kimani being dissatisfied with the entire ruling delivered by Hon. Mr. Justice Okong’o on the 26th day of June 2019 intends to appeal against the said decision to the court of appeal.” (Emphasis supplied).
8. Again it is imperative to note that the said Notice of Appeal refers to a ruling delivered by Okong’o J on June 26, 2019 and not November 30, 2003 as sought in the main prayer. Additionally, the ruling of Okong’o J that has been annexed to the motion is dated July 30, 2020 and not June 26, 2019 as indicated in the Notice of Appeal. Similarly, there is no evidence that the applicant had requested for certified copies of the proceedings as deposed in paragraph 5 in support of the motion. The document referred to therein and marked as “BG-3” is from Kenya Law and is not a request for proceedings.
9. In light of all these discrepancies which leaves this court in a lot of dilemma it is evident that the order being sought cannot issue. Accordingly, this court declines to grant the applicant leave to file an appeal out of time against the judgment dated November 30, 2003 as sought.
10. There will be no order as to costs.

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

F. SICHALE

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

