



IN THE COURT OF APPEAL

AT NAIROBI

CORAM: KIAGE J.A (IN CHAMBERS)

CIVIL APPLICATION NO. 155 OF 2019

BETWEEN

PATRICK WANYONYI KHAEMBA.....APPLICANT

AND

FAITH JEROP KIU.....1ST RESPONDENT

BEATRICE WANGARE KIU.....2ND RESPONDENT

(An application for extension of time to Appeal against the Judgment and Decree of the

High Court at Eldoret (H.A.Omondi, J.) dated 22nd July, 2019

in

Petition No. 18 of 2017)

RULING

The applicant, **Patrick Wanyonyi Khaemba**, has moved the Court by Motion filed on 4th December 2019 principally seeking the following order;

THAT this Honourable Court be pleased to grant the appellant/applicant herein extension of time and leave to lodge and serve the Notice of Appeal, the Memorandum, and the Record of Appeal on the respondents out of time in the intended appeal from the decision of the High Court at Eldoret (H.A.Omondi J.) dated and delivered on 22nd July, 2019 in Petition No. 18 of 2017.

The application is based on ten grounds including that the applicant learnt that judgement had been delivered in **Eldoret High Court Petition No. 18 of 2017** on 19th August 2019 when he was served with a notice of appeal dated 13th August 2019 by the respondents' Counsel **R.M Wafula & Company Advocates**; and that the delay in filing the appeal was occasioned by delay in the supply of certified court proceedings and judgment. The applicant further deposes in his affidavit dated 28th August 2019 that being a non-advocate and not conversant with the rules of this Court, he filed a notice of cross-appeal dated 19th November 2019, which he would adopt as a memorandum of appeal if this application is allowed.

Quite evidently, this is an obscure application. The applicant having attested that he was served with a notice of appeal by the respondents on 13th August 2019, and he subsequently filed a notice of cross-appeal dated 19th November 2019, it is puzzling as to why he seeks the aforementioned order. **Rule 93(1)** of this Court's Rules provides that;

“A respondent who desires to contend at the hearing of the appeal that the decision of the superior court or any part thereof should be varied or reversed, either in any event or in the event of the appeal being allowed in whole or in part, shall give notice to that effect, specifying the grounds of his contention and the nature of the order which he proposes to ask the Court to make, or to make in that event, as the case may be.”

The record shows that the applicant lodged a notice of cross-appeal dated 19th November 2019 in **Civil Appeal No. 71 of 2019** at the Eldoret sub-registry. Though the word “notice” is omitted, the document is a notice of cross-appeal in form and content.

Assuming that what the applicant sought was extension of time (and he did not) to lodge the notice of cross-appeal out of time, all he needed to do was refer to **Rule 93(2)** of the **Court of Appeal Rules**. The sub-rule states;

“A notice given by a respondent under this rule.....shall be lodged in quadruplicate in the appropriate registry not more than thirty days after service on the respondent of the memorandum of appeal and the record of appeal or not less than thirty days before the hearing of the appeal, whichever is the later.”

The lodging of a notice of cross-appeal in **Eldoret Civil Appeal No. 71 of 2019** by the applicant is proof that there is an existing appeal. The applicant should therefore have been guided by the timelines stipulated in **Rule 93(2)** in filing his notice which renders his application to this Court unnecessary.

I am skeptical of the applicant’s claim that being a non-advocate he is not conversant with the Rules of this Court. The form and structure of this application, as well as the notice of cross – appeal exhibits some knowledge of this Court’s Rules. Whether he prepared the motion himself or with some assistance from some unnamed person, the application was superfluous.

In the result I decline to grant this motion and I dismiss it but with no order as to costs.

DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF MARCH, 2021.

P. O. KIAGE

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR