



**IN THE COURT OF APPEAL**

**AT KISUMU**

**(CORAM: DR. K. I. LAIBUTA, J.A. (IN CHAMBERS))**

**MISC. CRIMINAL APPLICATION NO. 001 OF 2021**

**BETWEEN**

**DUNCAN ODONGO OWINO.....APPLICANT**

**AND**

**REPUBLIC.....RESPONDENT**

*(Being an application under rule 113 of the Court of Appeal Rules,*

*in an intended appeal from the Judgment of Justice F. Ochieng, dated*

*17th December, 2020 in Kisumu High Court Criminal Appeal No. 21 of 2019)*

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**RULING**

**Background**

The Applicant's Notice of Motion before me seeks waiver of fees pursuant to **Rule 113** of the Court of Appeal Rules in relation to an intended appeal from the judgment of Justice F. Ochieng given on 17<sup>th</sup> December 2020 in Kisumu High Court Criminal Appeal No. 21 of 2019, which was an appeal from the judgment of the Chief Magistrate's Court at Kisumu, Criminal Case No. 3 of 2018. Neither the Notice of Motion nor the supporting affidavit, despite being signed by the applicant by thumbprint, are dated or commissioned respectively.

The Notice of Motion discloses the grounds on which the application is founded and his supporting affidavit explains the reasons for seeking to appeal as a pauper. According to him, he is in prison custody and abandoned by members of his family. Accordingly, he cannot raise court fees required for preparation of his record of appeal. He argues that his constitutional rights would be denied if the application is not granted. He concludes by asserting that the intended appeal has high chances of success.

The Applicant filed an undated Notice of Appeal on 6<sup>th</sup> January 2021 pursuant to **Rule 59** of the Court of Appeal Rules twenty days after delivery of the judgment. Yet, he has not applied for extension of time to file the notice out of time or to have it deemed as duly filed. According to the notice, which was filed in court on 6<sup>th</sup> January 2021, he seeks to appeal against both conviction and sentence, but does not disclose the offence by which the conviction relates, or the specific grounds of appeal. Neither has he made any written submissions in support of his application.

On his part, Mr. Ligami Shitsama for the Director of Public Prosecutions made written submissions dated 12th July 2021. He drew my attention to the provisions of **Rule 4** of the Court of Appeal Rules and **Section 349** of the CPC, both of which have no direct relation to the order sought in the Applicant's Motion under **Rule 113(1)**.

**Determination**

**Rule 113(1)** of the Court of Appeal Rules provides:

*“If in any appeal from a superior court acting in appellate jurisdiction in any criminal matter a judge of the superior court is satisfied on the application of the appellant—*

*(a) that the appeal raises one or more questions of law proper for determination by the Court; and*

*(b) that the appellant ought not, by reason of poverty, to be required to pay the whole of the fees ordinarily payable, including the fees for preparing the record of appeal, he may by order direct that the whole or any part of such fees be waived.”*

Having carefully read the Applicant’s undated Notice of Motion, the undated and uncommissioned affidavit filed in support thereof, the Notice of Appeal filed on 6<sup>th</sup> January 2021, I find that the Applicant has not disclosed what point of law (if any) is raised or is intended to be raised on appeal. Neither has he lodged a draft Memorandum of Appeal containing grounds on which the intended appeal is preferred. The bare face of his Motion discloses no such grounds and, therefore, the Applicant has failed to satisfy the primary requirement for the grant of the orders sought and, accordingly, the Notice of Motion herein fails and is dismissed with no orders as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 23<sup>RD</sup> DAY OF JULY, 2021**

**DR. K. I. LAIBUTA**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**