



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: GATEMBU, M'INOTI & SICHALE, JJ.A)

CIVIL APPLICATION SUP. NO. 11 OF 2013

BETWEEN

JARED MAKHAKHA.....APPLICANT

AND

PANAFRICAN PAPER MILLS (E.A.) LTD.....RESPONDENT

(Being an application for leave to appeal to the Supreme Court of Kenya against the Judgment of the court of Appeal at Kisumu (Omolo, Githinji & Aganyanya, JJ.A) delivered on 13th April, 2011

in

Civil Appeal No. 138 of 2008)

RULING OF THE COURT

The applicant, JAFRED MAKHAKHA filed a notice of motion dated 24th April, 2013 predicated under **Rule 30 (2)** of the Supreme Court Rules. PAN AFRICAN PAPER MILLS (E.A.) LTD was named as the respondent. In the motion, the applicant sought one substantive prayer:

“THAT the appellant/applicant be and is hereby granted leave to file an appeal out of time to the Supreme Court from the judgment herein dated the 13th day of April, 2011.”

The motion was supported by the applicant’s affidavit sworn on 25th April, 2013 in which he deponed that he was dissatisfied with this Court’s decision of 13th April, 2011 but that he could not “...*immediately appeal because the rules of the Supreme Court had not been put in place;*” that his “...*intended appeal raised issues of law of general public importance and constitutional issues touching on fundamental rights and freedoms guaranteed by the very Constitution.*”

During the pendency of the motion, M/S Nyairo and Company Advocates, acting on behalf of the respondent, filed a notice of preliminary objection dated 16th July, 2013, contending that this Court did not have jurisdiction to entertain the motion.

On 27th June, 2018 the matter came before us for plenary hearing. There was no representation from the firm of Nyairo & Company Advocates inspite of service of a hearing notice upon them on 21st May, 2018.

In his brief submissions before us, the applicant stated that he is desirous of moving the Supreme Court to clarify the Labour Laws as relates to when an employer ought to pay an employee who is absent from work and secondly, when an employer can terminate services of an employee.

We have considered the record, the appellant’s oral submissions before us, the preliminary objection raised by the respondent and the law.

In the motion before us, one of the grounds in support thereof is that the:-

“The intended appeal raises points of law of general public importance and pertinent constitutional rights issues.”

From the foregoing, the applicant seems to be saying that his intended appeal lies to the Supreme Court as of right as it raises “*pertinent constitutional right issues.*” He also seems to be saying that the intended appeal raises issues of general public importance. **Article 163 (4)** of the Constitution provides that:-

“Appeal shall lie from the Court of Appeal to the Supreme Court –

- a) as of right in any case involving the interpretation or application of this Constitution; and**
- b) in any other case in which the supreme Court, or the Court of Appeal, certifies that a matter of general public importance is involved,....”**

The upshot of the above is that in an appeal to the Supreme Court, whether as of right or upon certification that it raises issues of general public importance, the appellant is obliged to file a Notice of Appeal within 14 days of the judgment that is intended to be appealed against. (See Rule 31 of the Supreme Court Rules, 2012.

Upon institution of a Notice of Appeal, the provisions of **Rule 33** of the Supreme Court Rules, 2012 then sets in. It provides that an appeal has to be filed within 30 days of the filing of the Notice of Appeal where the appeal is as of right, or within 30 days after certification. In the motion before us, no such Notice of Appeal was filed by the applicant. In the absence of a Notice of Appeal, an extension of time to file an appeal out of time would be superfluous.

Additionally, we are not aware of any provision of the law, and none was drawn to our attention, that gives this Court the mandate to grant leave for the filing of an appeal out of time on behalf of the Supreme Court.

It is for the foregoing reasons that we find no merit in the applicant’s motion.

It is hereby dismissed. We make no orders as to costs.

Dated and delivered at Nairobi this 17th day of August, 2018.

S. GATEMBU KAIRU, FCI Arb

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JUDGE OF APPEAL

K. M’INOTI

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JUDGE OF APPEAL

F. SICHALE

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JUDGE OF APPEAL

I certify that this is a true

copy of the original.

DEPUTY REGISTRAR